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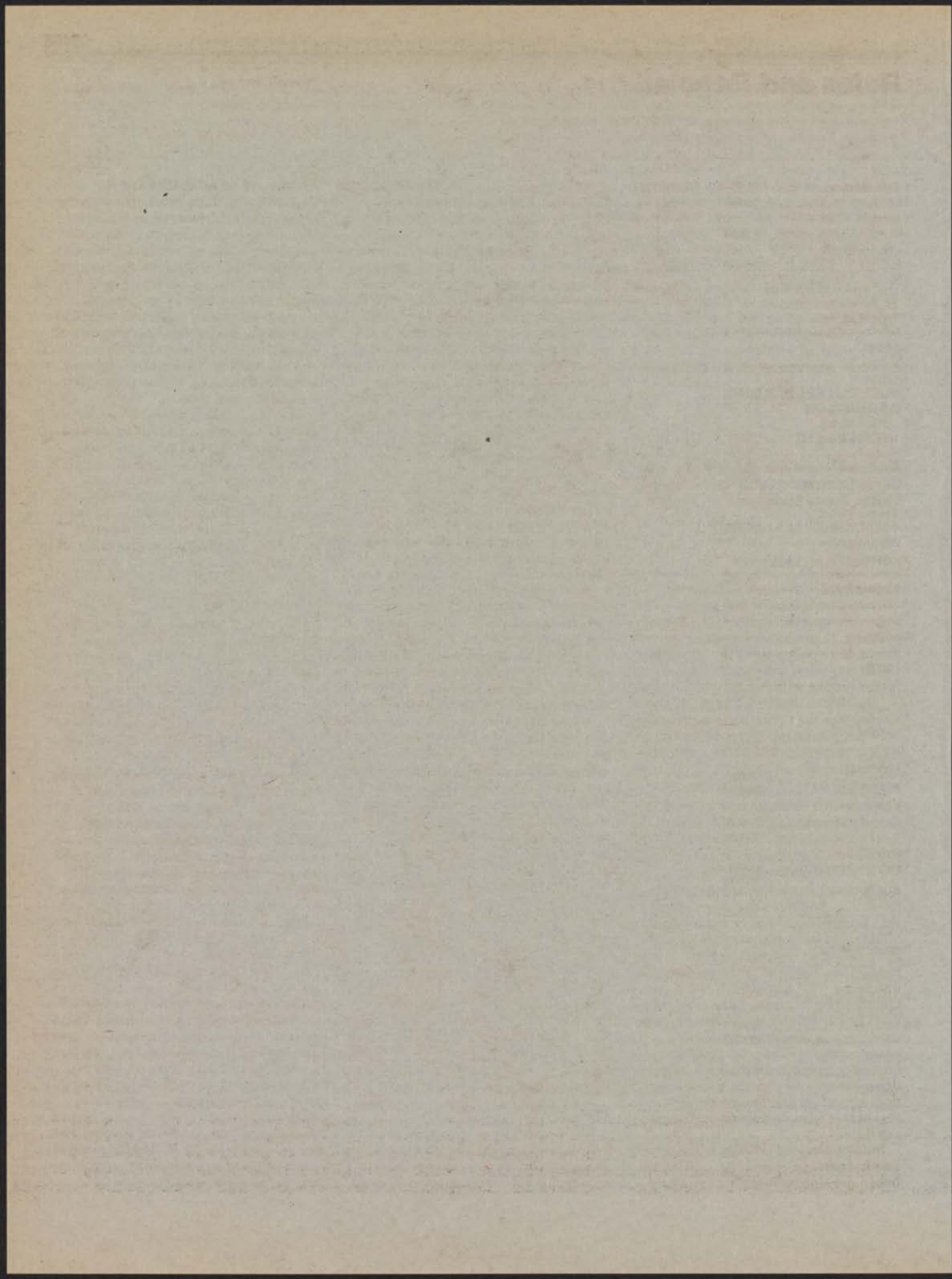
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Rules and Regulations

Federal Register

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510. The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Availability and Adequacy of Design Bases Information at Nuclear Power Plants; Policy Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy statement.

SUMMARY: The Nuclear Regulatory Commission is issuing this policy statement on availability and adequacy of design information at nuclear power plants. This policy statement describes the Commission's expectations and future actions with regard to the availability of design information and emphasizes the Commission's view that facilities should not be modified without a clear understanding of the applicable engineering design bases.

EFFECTIVE DATE: August 10, 1992.

FOR FURTHER INFORMATION CONTACT:

Eugene V. Imbro, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 504-2967.

SUPPLEMENTARY INFORMATION: NRC inspection findings have demonstrated that some licensees have not adequately maintained their design bases information as required by NRC regulations. Both the problems identified during the NRC inspections and those identified by licensees have prompted most power reactor licensees to initiate, over the past several years, design bases reconstitution programs. To implement a reconstitution program, licensees seek to identify missing design documentation and to selectively regenerate missing documentation as required.

In 1989, Nuclear Utilities Management and Resources Council, Inc., (NUMARC) began developing their "Design Basis

Program Guidelines," NUMARC 90-12. While developing these guidelines, NUMARC discussed them at several public meetings held with the NRC. The staff has concluded the NUMARC guidelines provide a useful standard framework for implementing design reconstitution programs. The staff also agrees no single approach would enable utilities to best accomplish the reconstitution task. The NUMARC guidance appeared to provide sufficient flexibility for individual utilities to structure their programs to respond most efficiently to their unique needs and circumstances.

The staff sent comments on the guidelines to NUMARC on November 9, 1990. Commission paper SECY-90-365 informed the Commissioners in advance about the staff response to NUMARC.

The staff requested NUMARC consider making the design bases effort a NUMARC initiative. NUMARC concluded they would not pursue a formal initiative, but would forward the guidelines to their members to use on a voluntary basis. Their reason for not pursuing an initiative was that most of their members were already conducting or evaluating the need to conduct design bases reconstitution programs.

The Commission's evaluation of the status of reconstitution programs clearly indicates the licensees' substantial investment in these programs should yield positive safety benefits for a majority of sites. The NRC commends those licensees that are acting to ensure technically adequate and accessible design bases documentation is maintained.

However, the Commission is concerned some situations exist where licensees have not critically examined their design control and configuration management processes to identify requisite measures to ensure the plant is operating within the design bases envelope. Therefore, the Commission is articulating its expectations with regard to design information and elaborating on its planned activities to confirm the integrity of the as-configured plant with respect to the plant design bases.

Policy Statement

Position

The Commission has concluded that maintaining current and accessible design documentation is important to ensure that (1) the plant physical and

functional characteristics are maintained and are consistent with the design bases as required by NRC regulation, (2) systems, structures, and components can perform their intended functions, and (3) the plant is operated in a manner consistent with the design bases. The Commission believes the regulatory framework already exists to address the need for accessible design bases and control of design information. The availability of current design and licensing bases will also expedite the license renewal process.

The Commission believes, as a result of NRC inspections and licensees' self-assessments, that all power reactor licensees should assess the accessibility and adequacy of their design bases documentation. The results of this self-assessment should form the basis for a licensee's decision whether a design reconstitution program is necessary and the attributes to be included in the program. The Commission recognizes the need for a design reconstitution program to be tailored to meet the unique needs of a particular utility. The structure and content of the design document reconstitution program will be influenced by various factors, such as the utility's organizational structure, the availability or unavailability of design documentation, and the intended users of the documentation. The Commission expects that after completing a reconstitution program, or as a basis for concluding that such a program is unnecessary, the licensee will have current design documents and adequate technical bases to demonstrate that the plant physical and functional characteristics are consistent with the design basis, the systems, structures, and components can perform their intended functions and the plant is being operated in a manner consistent with the design bases.

NUMARC has developed guidance for the conduct of design bases reconstitution programs. The guidance outlines a framework to organize and collate nuclear power plant design bases information. This information provides the rationale for the design bases consistent with the definition of design bases contained in 10 CFR 50.2.

NUMARC 90-12, "Design Basis Program Guidelines," was issued in October 1990 for voluntary use by NUMARC member organizations as a reference point from which licensees would review their

existing or planned efforts to collate supporting design information. The Commission believes NUMARC's approach provides a useful framework and worthwhile insights to those utilities undertaking design basis programs.

The Commission believes a licensee should be able to show that it has sufficient documentation, including calculations or pre-operational, startup or surveillance test data to conclude the current facility configuration is consistent with its design bases. The Commission further believes the design bases must be understood and documented to support operability determinations and 10 CFR 50.59 evaluations that may need to be made quickly in responding to plant events. The design bases related information should be retrievable within a reasonable period of time, however, it is not necessary for all design basis documentation to be organized in one place. The information used solely to support the development of a modification package would not need to be able to be retrieved as expeditiously as information needed to support an operability determination.

In the event the design bases information is found technically inadequate or not accessible, licensees should consider whether remedial action is warranted. A methodology should be developed and implemented to ensure licensee resources are focused on design information regeneration in a timeframe commensurate with the safety significance of the missing or erroneous information.

The Commission also emphasizes it is very important that modifications to a facility be made after a thorough review has been conducted and an understanding of the applicable underlying design bases has been gained in order to ensure appropriate design margins are preserved.

Future Actions

The Commission will continue to inspect routinely the adequacy of design control program effectiveness. The Commission concludes that ensuring the design bases and configuration of a facility are well understood and controlled in plant documents will also ensure that those parts of the current licensing bases of most safety significance are understood and controlled. Other aspects of the current licensing bases, such as emergency preparedness and security plans, should also be appropriately examined to

ensure their validity for the life of the facility, including any renewal period.

In order to ensure the Commission is apprised of industry's activities, the NRC will take the following actions.

(1) The staff will issue a generic letter requesting all licensees to describe the programs that are in place to ensure design information is correct, accessible, and maintained current. Those licensees that are not implementing a design reconstitution program will be requested to provide their rationale for not doing so. If a reconstitution program is under way, the schedule for implementation and completion will be requested.

(2) The staff will prioritize NRC inspections of licensee's management of design and configuration using SSFI-type techniques based upon responses to the generic letter and other plant specific information known to the NRC. Additional staff guidance will be developed, where needed, for the design bases aspects of these inspections.

(3) The NRC systematic assessment of licensee performance (SALP) process will be modified to explicitly address assessment of licensee programs to control design bases information that reflect NRC inspection activity in this area and assure consistent evaluations.

(4) The staff will continue to encourage self-identification of design bases issues through application of the provisions of the Commission's enforcement policy. The staff will, however, pursue enforcement actions for engineering deficiencies whose root cause lies in the inadequacy or unavailability of design bases information and which are identified during NRC inspections.

Paperwork Reduction Act Statement

This final policy statement does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget approval number 3150-0011.

Dated at Rockville, Maryland, this 4th day of August, 1992.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,
Secretary of the Commission.

[FR Doc. 92-18895 Filed 8-7-92; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 584

[92-195]

RIN 1550-AA38

Registration, Examination and Reports; Statements, Applications, Reports and Notices To Be Filed

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS) is hereby amending its regulations pertaining to holding company reporting requirements. In updating existing forms to reflect changes necessitated by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the OTS has combined several forms to streamline the reporting process and ease the regulatory burden on savings and loan holding companies. In particular, the reporting requirements set forth in Forms H-(b)3, H-(b)4, H-(b)5 and H-(b)10 Registration Statements are now contained in one body of instructions for all Registrants, the H-(b)10. In addition, the H-(b)11 Annual Report and the H-(b)12 Current Report have been merged into one set of instructions requiring an annual filing with quarterly updates informing the OTS of any changes. The H-(f) Dividend Notification has been rescinded, since the requirements contained in the Capital Distributions regulation are sufficient for the OTS's monitoring and supervision purposes.

EFFECTIVE DATE: September 9, 1992.

FOR FURTHER INFORMATION CONTACT: Michael P. Scott, Program Manager, (202) 906-5748, Supervision Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

The OTS is today issuing a final rule amending its holding company reporting requirements. This amendment affects the registration, annual, and current reporting requirements.

Registration Statements

As previously structured, holding companies were required to choose from four separate registration statements. These separate statements were originally deemed necessary to accommodate special types of holding companies (i.e., companies that became savings and loan holding companies as

a result of being secured creditors, voting trusts, or corporate trustees).

The OTS has combined the four forms into one package to minimize the confusion that often resulted for registrants from trying to determine the appropriate registration statement and obtaining a separate set of instructions to meet regulatory reporting requirements. The reporting requirements still vary depending on the type of entity registering as a savings and loan holding company. However, instructions for all registrants are now contained in one form, the H-(b)10 Registration Statement (OMB No. 1550-0020).

Annual/Current Reports

Section 10(b) of the Home Owners' Loan Act (Act) as implemented by part 584 of the Regulations states that each savings and loan holding company and its subsidiaries, other than a savings association, are required to file reports with the OTS as may be required by the Director. The Director has determined that the filing of annual and current reports fulfills this requirement.

The required information was previously gathered through two separate forms that established reporting requirements. The H-(b)11 Annual Report was required to be filed within 120 days of a savings and loan holding company's fiscal year end. In addition to the H-(b)11, all savings and loan holding companies were required to file H-(b)12 Current Reports within 15 days of the end of a month when certain specified and material events had occurred (primarily changes in information reported in the H-(b)11).

To streamline and consolidate reporting requirements, the OTS eliminated the H-(b)12 and modified the H-(b)11 to accommodate reporting on both an annual and current basis. This change eliminates duplicate information requests contained in the two separate forms and, thereby, eases the burden on respondents as well as regulatory staff.

The surviving form, the Annual/Current Report H-(b)11 (OMB No. 1550-0060), is used to collect information on an annual and quarterly basis. Each savings and loan holding company is required to file an annual report within 90 days of its fiscal year end. This coincides with the submission by publicly traded holding companies of the 10-K filing with the Securities and Exchange Commission (SEC). However, instead of the former monthly reporting requirements, holding companies are now required to notify the agency on a quarterly basis (except for the fourth quarter of the holding company's fiscal year) regarding any material changes in

the information presented in its H-(b)11 Annual Report. However, if material changes occur during the fourth quarter with respect to certain items described in the form instructions, an H-(b)11 report for such quarter must be filed within 45 days of the end of the fourth quarter.

Dividend Notification

Section 10(f) of the Act as implemented by part 584 of the Regulations states that every subsidiary savings association of a savings and loan holding company is required to provide the OTS with not less than 30 days advance notice of a proposed dividend declaration. The H-(f) Dividend Notification has been used by subsidiary savings associations to fulfill this requirement.

Using its authority to issue regulations to provide for the safe and sound operation of savings associations under sections 3(b)(2), 3(e)(1) and 4 of the Act, the OTS issued the Capital Distributions regulation (12 CFR 563.134). This regulation became effective in August, 1990. As discussed below, the issuance of this regulation has rendered the H-(f) Dividend Notification obsolete.

Prior to the issuance of the Capital Distributions regulation, only savings associations in a holding company structure were required to provide the OTS with not less than 30 days advance notice of a proposed dividend. This notification was provided to the OTS through the submission of a H-(f) Dividend Notification. With the exception of recently converted savings associations wishing to exceed the limitations imposed by 12 CFR 563b.3(g), savings associations not in a holding company structure were not required to provide the OTS with prior or subsequent notice of the payment of a dividend.

The Capital Distributions regulation requires all savings associations to file at least a 30-day advance notice of all proposed capital distributions whether or not OTS approval is required. Capital distributions are defined in 12 CFR 563.134(a)(1) to include, among other things, dividends, stock repurchases, and cash-out mergers.

Since the provisions of the Capital Distributions rule are sufficient for the OTS's monitoring and supervision purposes, the H-(f) Dividend Notification form has been rescinded. A new form may be developed to capture the information required by 12 CFR 563.134. If it is developed, this form would be used by all savings associations in providing advance notice to the OTS of all proposed capital distributions.

II. Summary of Comments

A. General Summary

On September 23, 1991, the OTS published a notice of proposed rulemaking in the *Federal Register* describing amendments to holding company reporting requirements. The public comment period on the proposal closed on October 23, 1991.

The OTS received a total of 7 letters of comment including 2 from savings and loan holding companies; 2 from law firms; and 3 from savings association trade associations. Generally, the commenters supported the proposal. Of the 7 commenters, 4 requested clarification or specific changes as further described below.

B. Specific Issues Discussion

1. Filing Requirements—Annual/Current Report H-(b)11

The OTS published a notice regarding the Annual/Current Report H-(b)11 in the *Federal Register* on January 16, 1991. The form originally contained a provision requiring that quarterly filings be submitted 30 days after the end of the quarter. The form also required that companies filing with the SEC simultaneously file a copy of that filing with the OTS. Thus, companies reporting to the SEC were required to file with the OTS both 30 days after the end of the quarter and 45 days after the end of the quarter. One late commenter requested that the OTS extend the 30 day filing requirement to 45 days so that the timing of filings with the OTS would coincide with SEC submissions. Although this comment was received subsequent to the conclusion of the public comment period for the form, we considered it in our review of the comments received during the part 584 revision project and have concluded that quarterly filings shall be submitted within 45 days of the end of the quarter. In addition, any filing that a savings and loan holding company submits to the SEC must simultaneously be filed with the OTS.

One commenter requested clarification as to whether the 45 day and 90 day filing requirements for quarterly and annual filings, respectively, applied to receipt of the submission by the Washington, DC office or by the appropriate Regional Office. Since supervision and examination authority primarily rests with the Regional Director, or his designee, we clarify that the Annual/Current Report H-(b)11 should be received by the appropriate Regional Office no later than 90 days after the

end of the fiscal year and 45 days after the end of the quarter.

One commenter indicated that the proposed regulation required companies to file forms at different locations than those required by the form itself. The H-(b)11 form, therefore, has been revised to specifically set forth the filing procedures and such instructions have been deleted from this final rule.

2. Modification of Requirements

One commenter suggested that the rule mirror the SEC's Exchange Act filing provision permitting an extension of time of up to 15 days to file forms 10-Q or 10-K. Under paragraph 8 of the H-(b)11's General Instructions, the Regional Director or his designee has the authority to modify reporting requirements. It is under this authority that the Regional Director or his designee may extend the period of time for filing.

One commenter suggested that the final rule should permit the Director to waive annual and current reports on a case-by-case basis. As stated above, under paragraph 8 of the H-(b)11's General Instructions, the Regional Director or his designee has the authority to modify reporting requirements. Items of the Report may be waived or modified at the discretion of the Regional Director or his designee. However, submission of the filing may not be waived.

One commenter requested clarification that preliminary proxy materials filed with the SEC do not trigger an H-(b)11 filing pursuant to Item 17 of the form since the OTS does not review proxy materials for holding companies. Since such materials are an important part of the OTS's general oversight of holding companies, the OTS will continue to require that such materials be filed concurrently with the SEC and the OTS unless a modification is approved by the Regional Director, or his designee, on a case-by-case basis.

One commenter suggested that quarterly filings should only be required if a material change occurs. The OTS has considered this comment and believes that the management and directorate of a holding company have the responsibility to either disclose material changes or to certify that such changes have not occurred.

3. Dividend Notification

One commenter suggested that a new form should be developed to replace the H-(f) Dividend Notification form. As stated above and in the proposed rule, the OTS is considering developing a new form to be used by all savings

associations. However, a form has not yet been developed.

Executive Order 12291

The OTS has determined that this final rule does not constitute a "major rule" and, therefore, does not require the preparation of a regulatory impact analysis.

Regulatory Flexibility Act

It is certified that this final rule will not have a significant economic impact on a substantial number of small entities. Consequently, a Regulatory Flexibility Analysis is not required.

List of Subjects in 12 CFR Part 584

Administrative practice and procedure, Holding companies, Reporting and recordkeeping requirements, Savings associations, Securities.

Accordingly, the Office of Thrift Supervision hereby amends part 584, subchapter F, chapter V, title 12, Code of Federal Regulations as set forth below:

PART 584—[AMENDED]

1. The authority citation for part 584 is revised to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1468.

2. Section 584.1 is amended by revising paragraphs (a) and (e) to read as follows:

§ 584.1 Registration, examination and reports.

(a) *Filing of registration statement and other reports*—(1) *Filing of registration statement*. Not later than 90 days after becoming a savings and loan holding company, each savings and loan holding company shall register with the OTS by filing a registration statement H-(b)10.

(2) *Filing of annual/current reports*. Each registered savings and loan holding company, including subsidiary savings and loan holding companies, shall file an annual/current report H-(b)11, except that such report need not be filed by a savings and loan holding company that is a trust (other than a business trust), secured creditor, or corporate trustee. The H-(b)11 report must be filed no later than 90 days after the close of the fiscal year. Quarterly filings must also be submitted on the H-(b)11 report within 45 days of the end of each quarter (except for the fourth quarter of the holding company's fiscal year) and should describe any material changes from the most recently filed H-(b)11 report or should indicate that no such changes have occurred. However, if material changes have occurred during

the fourth quarter with respect to certain items described in the form instructions, an H-(b)11 report for such quarter must be filed within 45 days of the end of such quarter.

(3) *General*. Registration statements and annual/current reports are to be filed with the OTS in accordance with the instructions contained in each form. In addition, multiple savings and loan holding companies must file conformed copies with any area office that has supervisory authority over a subsidiary savings association. Copies of the forms to be used in submitting registration statements or annual/current reports may be obtained from any Regional Director, or designee.

(e) *Reports*. Each savings and loan holding company and each subsidiary thereof, other than a savings association, shall file with the OTS such reports as may be required by the OTS. Such reports shall be made under oath or otherwise, and shall be in such form and for such periods, as the OTS may prescribe. Each report shall contain information concerning the operations of such savings and loan holding company and its subsidiaries as the OTS may require.

§§ 584.5 and 584.10 [Removed]

3. Sections 584.5 and 584.10 are removed.

Dated: May 13, 1992.

By the Office of Thrift Supervision.

Timothy Ryan,

Director.

[FR Doc. 92-18841 Filed 8-7-92; 8:45 am]

BILLING CODE 6720-01-M

Customs Service

19 CFR Part 24

[T.D. 92-73]

Charges for Returned Checks

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to implement a \$30.00 charge for any check returned unpaid which was presented for payment of duties on noncommercial importations for which formal entry was not required, or for payment in connection with any other Customs transaction not backed by a Customs bond. Although Customs proposed to amend the Customs Regulations to

establish a \$100.00 charge for each such returned check. Customs has determined that the amount should be changed to \$30.00 in order to be more consistent with amounts currently charged by financial institutions.

EFFECTIVE DATE: September 9, 1992.

FOR FURTHER INFORMATION CONTACT: Robert L. Branch, Revenue Branch, National Finance Center, U.S. Customs Service (317) 298-1307.

SUPPLEMENTARY INFORMATION:

Background

In a Notice published in the *Federal Register* on December 6, 1988 (53 FR 49207), the Customs Service set forth for public comment a proposal to amend the Customs Regulations to establish a \$100.00 charge for each check which is returned by a financial institution to the Customs Service unpaid if that check had been presented for payment of duties or other charges on noncommercial importations for which a formal entry is not required or for payments in connection with any other transaction not backed by a Customs bond. The purpose of the charge is to offset the substantial additional operating costs to Customs generated in connection with the control and collection of returned items. The charge was designed to reflect the actual cost to Customs in connection with the activities of the National Finance Center in monitoring and collecting checks as well as costs incurred in connection with other Customs operations which are impeded by returned checks. Currently, no charge is assessed to cover the considerable extra expenditures incurred in connection with collections of returned checks.

In response to Customs invitation for comments on its proposal, one comment was received from the public. The point raised in that comment has been considered in developing this final rule.

While public comment on the proposal was minimal, Customs has conducted an internal review of the proposed charge. This review has led Customs to the determination that a charge is definitely warranted in instances where checks are returned by financial institutions, but that the fee should be set at \$30.00 rather than \$100.00. While this amount may not totally reflect all of the actual costs incurred by Customs in processing the returned items, it is consistent with amounts currently being charged by financial institutions. Additionally, Customs anticipates having to process fewer checks in the future, thereby reducing its exposure to these expenses. This expectation is based upon the

increasing ability of persons to use credit cards to pay amounts owed Customs.

Analysis of Comment

The single comment that was received objected to the proposal to the extent that the amendment would not allow for an exception from the charge when the return of the check was the result of an error by the bank over which the maker of the check had absolutely no control. We agree that the charge should not be imposed absolutely in all cases without providing the check's maker the opportunity of showing he was not at fault because of other factors over which he had no control. Accordingly, the proposal as published in this final rule contains a minor change to add language allowing the Customs Service to waive a fee for a returned check when the maker is shown to be not at fault for the return.

Regulatory Flexibility Act and Executive Order 12291

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendment will not have a significant impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 or 604. Because this document does not result in a "major rule" as defined by Executive Order 12291, the regulatory analysis and review prescribed by the Executive Order is not required.

Drafting Information

The principal author of this document was Peter T. Lynch, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 24

Accounting, Claims, Customs duties and inspection, Taxes, Wages.

Amendment to the Regulations

Part 24 Customs Regulations (19 CFR part 24) is amended as set forth below:

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURES

1. The authority citation for part 24 continues in part to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 58a—58c, 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1624, 31 U.S.C. 9701, 26 U.S.C. 4461—4462.

Section 24.1 also issued under 19 U.S.C. 197, 198, 1684.

2. Section 24.1 is amended by adding a new paragraph (e) at the end thereof to read as follows:

§ 24.1 Collection of Customs duties, taxes, and other charges.

(e) Any person who pays by check any duties, taxes, fees or other charges or obligations due the Customs Service which are not guaranteed by a Customs bond shall be assessed a charge of \$30.00 for each check which is returned unpaid by a financial institution for any reason, except the charge will not be assessed if it is shown that the maker of the check was not at fault in connection with the return of the check. This charge shall be in addition to any unpaid duties, taxes and other charges.

Carol Hallett,

Commissioner of Customs.

Approved: July 22, 1992.

Peter K. Nunez,

Assistant Secretary of the Treasury.

[FR Doc. 92-18849 Filed 8-7-92; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Regulation No. 16]

RIN 0960-AC66

Supplemental Security Income for the Aged, Blind, and Disabled Resources and Exclusions; Definition of Resources

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: This final rule excludes from the definition of resources in the Supplemental Security Income (SSI) Program, for 1 calendar month following their receipt, certain retroactive cash payments made to an ineligible spouse or parent for providing medical or social services to the eligible individual. This rule also clarifies the policy regarding the commingling of funds paid to an eligible individual for approved medical or social services or paid to an eligible spouse or parent for the provision of such services for purposes of defining resources.

EFFECTIVE DATE: This rule is effective August 10, 1992.

FOR FURTHER INFORMATION CONTACT: Irv Darrow, Esq., Legal Assistant, Office of Regulations, 3-B-1 Operations

Building, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 966-0512.

SUPPLEMENTARY INFORMATION: This rule was published as a notice of proposed rulemaking in the *Federal Register* on February 26, 1991 (56 FR 7821). A 60-day comment period was provided. Comments received in response to the notice of proposed rulemaking are discussed under the heading "Discussion of Comments".

Certain cash payments specifically to enable people to pay for medical or social services as defined in § 416.1103(a) and (b) are not income for SSI purposes because they are assumed not to be available for support and maintenance. Recognizing that the recipient is not always able to use the cash for payment of medical or social services in the month of receipt, we published a final rule in the *Federal Register* on June 21, 1988 (53 FR 23230). That rule, § 416.1201(a)(3), provides that for 1 full calendar month following the month of receipt, cash, which is not income under § 416.1103(a) or (b) because it is paid to an individual to enable the individual to pay for medical or social services, is not a resource. The rule does not encompass cash received as reimbursement for medical or social service bills the individual had already paid.

The June 1988 rule recognized that it was not reasonable to expect an individual to use certain funds for support and maintenance when the funds are clearly needed to pay for approved services which themselves are neither income nor resources. To use such funds for support and maintenance tends to thwart the purpose of the payer program and could result in an individual's having to do without needed services. The rule change simply provided a grace period to individuals for the disbursement of funds as intended by the payer program without the cash having an adverse effect on their SSI eligibility.

In describing medical or social services payments that would not be considered resources for 1 month following receipt, the June 1988 regulation omitted one category: retroactive cash payments (other than reimbursements) made to an ineligible spouse or parent for providing medical or social services to the eligible individual to whom their resources could be deemed. Such payments are income when received by the ineligible spouse or parent care provider, but not excluded from the income deeming process under § 416.1101(a)(16). However, under the current regulation, if

these funds are retained into the month following the month of receipt, they become resources which are subject to deeming and could, therefore, cause ineligibility.

In limited circumstances, governmental programs will pay a parent or spouse to provide a disabled child or spouse with certain services under a medical or social services program. Such care providers are able to give care and services with an exceptionally high and supportive level of personal dedication but their provision is so time-consuming that the spouse or parent has to give up (or severely curtail) work outside the home which might otherwise provide needed household income. Since the medical or social services payments are targeted to compensate for services given and lost household income, they are not deemed as income so that the intended benefit of having the services provided by caregivers in the home can be realized. For this reason, and to avoid SSI ineligibility due to excess deemed resources, we will provide a period of 1 full calendar month for the expenditure of retroactive cash payments made to an ineligible spouse or parent for providing medical or social services to the eligible individual. This type of retroactive payment will not be a resource until an opportunity has been given for its expenditure, that is, for 1 full calendar month after receipt. When such retroactive payments are made, we will assume that the care provider's first priority of expenditure is the personal and household bills which could not be paid without these payments. Therefore, we will not consider the care provider's retroactive payments to be resources until the second calendar month following their receipt in order to give the ineligible spouse or parent the same length of time for expenditure that we would give the care recipient. This new resource treatment applies only to retroactive cash payments made to an ineligible spouse or parent for providing medical or social services to the eligible individual.

In addition to the foregoing, § 416.1201(a)(3) is amended to clarify our policy that this exclusion from the definition of resources applies only to the unspent portion of the cash payments described therein and that the unspent portion must be identifiable from other resources for this resource treatment to apply. This policy does not preclude the commingling of funds, but separate identification must be possible through the use of personal records in order for the amount to be excluded from the definition of resources for the

calendar month following the month of receipt.

Discussion of Comments

Comments were received from 2 organizations, a State agency, and an individual in response to the notice of proposed rulemaking published in the *Federal Register* on February 26, 1991 (56 FR 7821). A summary of the comments submitted and our responses follow.

Comment

Three commenters suggested that we clarify that "retroactive cash payment," as used in 20 CFR 416.1201(a)(3), includes any interest/delay component that is part of the payment.

Response

The term "retroactive cash payment," as used in 20 CFR 416.1201(a)(3), includes any interest/delay component that is part of the payment. We feel this is implied in the language and does not need further clarification.

Comment

One commenter requested that the final rule clarify the meaning of "retroactive cash payment," as used in 20 CFR 416.1201(a)(3), with respect to a payment received by a care provider in the month due, but following the month in which services are rendered.

Response

For purposes of 20 CFR 416.1201(a)(3), a "retroactive cash payment" is one that is paid to the care provider after the month in which it was due. If payment is made in the month due, but following the month in which services were rendered, such payment is not considered to be "retroactive" for purposes of this rule.

We have made several technical changes in the final regulation. We have substituted the word "provision" for "exclusion" where the latter appeared in the proposed rules at 20 CFR 416.1201(a)(3)(i), (ii), and (iii). In addition, we have deleted the word "exclusion" from the second sentence in paragraph (a)(3)(ii). These changes are meant to preserve the distinction between a resource "exclusion" (which can be created only through statutory change) and an asset which does not meet the regulatory definition of a resource. With these changes, the regulation, as proposed, is adopted.

Regulatory Procedures

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive

Order 12291 since the program and administrative costs of this regulation will be insignificant and the threshold criteria for a major rule are not otherwise met. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

This regulation will impose no additional reporting and recordkeeping requirements subject to clearance by the Office of Management and Budget.

Regulatory Flexibility Act

We certify that this regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities because this rule affects only individuals and States. Therefore, a regulatory flexibility analysis as provided in Public Law 96-354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Programs No. 93.807, Supplemental Security Income Program)

List of Subjects in 20 CFR Part 416

Administrative practices and procedures, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income (SSI), Reporting and recordkeeping requirements.

Dated: February 10, 1992.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: March 27, 1992.

Louis W. Sullivan,

Secretary of Health and Human Services.

For the reasons set out in the preamble, part 416 of chapter III of title 20 of the Code of Federal Regulations is amended as follows:

1. The authority citation for subpart L of part 416 continues to read as follows:

Authority: Secs. 1102, 1602, 1611, 1612, 1613, 1614(f), 1621 and 1631 of the Social Security Act; 42 U.S.C. 1302, 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j and 1383; sec. 211 of Pub. L. 93-60, 87 Stat. 154.

2. Section 416.1201 is amended by revising paragraph (a)(3) to read as follows:

§ 416.1201 Resources; general.

(a) * * *

(3) Except for cash reimbursement of medical or social services expenses already paid for by the individual, cash received for medical or social services that is not income under § 416.1103(a) or (b), or a retroactive cash payment which is income that is excluded from deeming under § 416.1161(a)(16), is not a resource for the calendar month following the month of its receipt. However, cash retained until the first moment of the

second calendar month following its receipt is a resource at that time.

(i) For purposes of this provision, a retroactive cash payment is one that is paid after the month in which it was due.

(ii) This provision applies only to the unspent portion of those cash payments identified in this paragraph (a)(3). Once the cash from such payments is spent, this provision does not apply to items purchased with the money, even if the period described above has not expired.

(iii) Unspent money from those cash payments identified in this paragraph (a)(3) must be identifiable from other resources for this provision to apply. The money may be commingled with other funds, but if this is done in such a fashion that an amount from such payments can no longer be separately identified, that amount will count toward the resource limit described in § 416.1205.

* * * * *

[FR Doc. 92-18874 Filed 8-7-92; 8:45 am]

BILLING CODE 4190-29-M

Food and Drug Administration

21 CFR Part 14

Advisory Committees; Science Board to the Food and Drug Administration; Establishment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is announcing the establishment by the Commissioner of Food and Drugs of the Science Board to the Food and Drug Administration in the Office of the Commissioner. Elsewhere in this issue of the *Federal Register*, FDA is publishing a notice requesting nominations for membership on this committee. This document adds the Science Board to the agency's list of standing advisory committees.

DATES: This rule becomes effective August 10, 1992. Authority for the committee being established will end on June 28, 1994, unless the Commissioner of Food and Drugs formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT:

Donna M. Combs, Committee Management Office (HFA-306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2765.

SUPPLEMENTARY INFORMATION: Under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463), section 903 of the Federal Food, Drug, and

Cosmetic Act (21 U.S.C. 394) as amended by the Food and Drug Administration Revitalization Act (Pub. L. 101-635), and 21 CFR 14.40(b), FDA is announcing the establishment by the Commissioner of Food and Drugs of the Science Board (the board) to the Food and Drug Administration.

The board shall provide advice primarily to the agency's Senior Science Advisor and, as needed, to the Commissioner and other appropriate officials on specific complex and technical issues as well as emerging issues within the scientific community in industry and academia. Additionally, the board will provide advice to the agency on keeping pace with technical and scientific evolutions in the fields of regulatory science; on formulating an appropriate research agenda; and on upgrading its scientific and research facilities to keep pace with these changes. It will also provide the means for critical review of agency sponsored intramural and extramural scientific research programs.

Because this is a technical amendment to 21 CFR Part 14, the Commissioner of Food and Drugs finds, under 21 CFR 10.40(c), (d), and (e), that notice and public procedure in § 10.40(b) are unnecessary and contrary to the public interest. Therefore, the agency is revising paragraph (a) of 21 CFR 14.100 as set forth below.

List of Subjects in 21 CFR Part 14

Administrative practice and procedure, Advisory committees, Color additives, Drugs, Radiation protection.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR Part 14 is amended as follows:

PART 14—PUBLIC HEARING BEFORE A PUBLIC ADVISORY COMMITTEE

1. The authority citation for 21 CFR Part 14 continues to read as follows:

Authority: Secs. 201-903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321-394); 21 U.S.C. 41-50, 141-149, 467f, 679, 821, 1034; secs. 2, 351, 381 of the Public Health Service Act (42 U.S.C. 201, 262, 264); secs. 2-12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451-1461); 5 U.S.C. App. 2; 28 U.S.C. 2112.

2. Section 14.100 is amended by revising paragraph (a) to read as follows:

§ 14.100 List of standing advisory committees.

* * * * *

(a) *Office of the Commissioner—(1) Board of Tea Experts.*

(i) Date established: March 2, 1897.
 (ii) Function: Advises on establishment of uniform standards of purity, quality, and fitness for consumption of all tea imported into the United States under 21 U.S.C. 42.

(2) *Science Board to the Food and Drug Administration.*

(i) Date established: June 26, 1992.
 (ii) Function: The board shall provide advice primarily to the agency's Senior Science Advisor and, as needed, to the Commissioner and other appropriate officials on specific complex and technical issues as well as emerging issues within the scientific community in industry and academia. Additionally, the board will provide advice to the agency on keeping pace with technical and scientific evolutions in the fields of regulatory science; on formulating an appropriate research agenda; and on upgrading its scientific and research facilities to keep pace with these changes. It will also provide the means for critical review of agency sponsored intramural and extramural scientific research programs.

Dated: August 3, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-18816 Filed 8-7-92; 8:45 am]

BILLING CODE 4160-01-F

21 CFR Part 178

[Docket No. 88F-0113]

Indirect Food Additives; Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of sodium *N*-cyclohexyl-*N*-palmitoyl taurate; chloroacetic acid, sodium salt, reaction products with 4,5-dihydro-2-undecyl-1*H*-imidazole-1-ethanol and sodium hydroxide; dodecylbenzene sulfonic acid; phosphoric acid; isopropyl alcohol; elemental iodine and hydriodic acid; and calcium chloride, as components of a sanitizing solution to be used on food-processing equipment and utensils, including dairy-processing equipment. This action responds to a petition filed by West Agro, Inc.

DATES: Effective August 10, 1992; written objections and requests for a hearing by September 9, 1992.

ADDRESSES: Submit written objections to the Dockets Management Branch

(HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Sandra L. Varner, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C Street, SW., Washington, DC 20204, 202-254-9511.

SUPPLEMENTARY INFORMATION: In a notice published in the *Federal Register* of May 26, 1988 (53 FR 19046), FDA announced that a food additive petition (FAP 7B4010) had been filed by West Agro, Inc., 11100 North Congress Ave., Kansas City, MO 64153-1222. The petition proposed that § 178.1010 *Sanitizing solutions* (21 CFR 178.1010) be amended to provide for the safe use of sodium *N*-cyclohexyl-*N*-palmitoyl taurate; acetic acid, chloro-, sodium salt, reaction products with 4,5-dihydro-2-undecyl-1*H*-imidazole-1-ethanol and sodium hydroxide; dodecylbenzene sulfonic acid; phosphoric acid; isopropyl alcohol; iodine/hydriodic acid; and calcium chloride, as components of a sanitizing solution to be used on food-contact surfaces.

I. Safety and Functional Effect of Petitioned Use of the Additives

Sanitizing solutions are mixtures of chemicals which function together to sanitize food-contact surfaces and are regulated as mixtures. Each listed component in a sanitizing solution has a functional effect. The subject sanitizing solution contains elemental iodine and hydriodic acid; sodium *N*-cyclohexyl-*N*-palmitoyl taurate; chloroacetic acid, sodium salt, reaction products with 4,5-dihydro-2-undecyl-1*H*-imidazole-1-ethanol and sodium hydroxide; dodecylbenzene sulfonic acid; phosphoric acid; isopropyl alcohol; and calcium chloride. The function and basis for the agency's determination of the safety of each component are described below.

A. Iodine and Hydriodic Acid

The combination of iodine and hydriodic acid functions as the antimicrobial agent in the subject sanitizing solution. This combination is currently regulated as a component in a sanitizing solution listed under § 178.1010(b)(5). On the basis of the data submitted in support of this regulated use and the data contained in the food additive petition submitted in support of the listing of this sanitizing solution, FDA finds that the use of iodine and hydriodic acid is safe in the subject sanitizing solution.

B. Sodium *N*-Cyclohexyl-*N*-Palmitoyl Taurate

Sodium *N*-cyclohexyl-*N*-palmitoyl taurate functions as an iodine complexing agent in the subject sanitizing solution. Sodium *N*-cyclohexyl-*N*-palmitoyl taurate is not currently regulated. On the basis of the data contained in this food additive petition submitted in support of the listing of this sanitizing solution, FDA finds that the use of sodium *N*-cyclohexyl-*N*-palmitoyl taurate in the subject sanitizing solution is safe.

C. Chloroacetic Acid, Sodium Salt, Reaction Products With 4,5-Dihydro-2-Undecyl-1*H*-Imidazole-1-Ethanol and Sodium Hydroxide

Chloroacetic acid, sodium salt, reaction products with 4,5-dihydro-2-undecyl-1*H*-imidazole-1-ethanol and sodium hydroxide function as a solubilizing agent in the subject sanitizing solution. In this document, the agency is using this preferred nomenclature for the substance identified in the notice of filing as acetic acid, chloro-, sodium salt, reaction products with 4,5-dihydro-2-undecyl-1*H*-imidazole-1-ethanol and sodium hydroxide. This substance is not currently regulated. On the basis of the data contained in this food additive petition submitted in support of the listing of this sanitizing solution, FDA finds that the use of chloroacetic acid, sodium salt, reaction products with 4,5-dihydro-2-undecyl-1*H*-imidazole-1-ethanol and sodium hydroxide in the subject sanitizing solution is safe.

D. Dodecylbenzene Sulfonic Acid

Dodecylbenzene sulfonic acid functions as an iodine complexing agent in the subject sanitizing solution. It is currently regulated for use in several sanitizing solutions under § 178.1010. On the basis of the data submitted in support of regulated uses and the data contained in this food additive petition submitted in support of the listing of this sanitizing solution, FDA finds that the use of dodecylbenzene sulfonic acid in the subject sanitizing solution is safe.

E. Phosphoric Acid

Phosphoric acid functions as an acidulant in the subject sanitizing solution. Phosphoric acid is listed as generally recognized as safe (GRAS) under 21 CFR 182.1073. It is also regulated for use in several sanitizing solutions under § 178.1010. On the basis of the data submitted in support of listed uses, the data contained in this food additive petition submitted in support of the listing of this sanitizing solution, and

other available data, FDA finds that the use of phosphoric acid in the subject sanitizing solution is safe.

F. Isopropyl Alcohol

Isopropyl alcohol functions as a solubilizing agent in the subject sanitizing solution. It is regulated for use as a component in several sanitizing solutions under § 178.1010 and is regulated under many other food additive regulations. On the basis of data submitted in support of regulated uses and the data contained in this food additive petition submitted in support of the listing of this sanitizing solution, FDA finds that the use of isopropyl alcohol in the subject sanitizing solution is safe.

G. Calcium Chloride

Calcium chloride functions as a defoaming agent in the subject sanitizing solution. Calcium chloride is affirmed as GRAS under 21 CFR 184.1192. On the basis of data contained in this food additive petition submitted in support of the listing of this sanitizing solution and other available data, FDA finds that the use of calcium chloride in the subject sanitizing solution is safe.

FDA has evaluated data in the petition and other relevant material. The agency concludes that these data and material establish the safety of the level of use and the effectiveness of the additive as a sanitizing solution and that the regulations should be amended in § 178.1010 as set forth below. The agency also finds that the data in this petition support the use of the subject sanitizing solution on dairy-processing equipment as well as other food-processing equipment and utensils.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

II. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen

in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

III. Filing of Objections

Any person who will be adversely affected by this regulation may at any time on or before September 9, 1992 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be numbered separately, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: Secs. 201, 402, 409, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 376).

2. Section 178.1010 is amended by adding new paragraphs (b)(40) and (c)(35) to read as follows:

§ 178.1010 Sanitizing solutions.

(b) * * *

(40) An aqueous solution prepared by combining elemental iodine (CAS Reg.

No. 7553-56-2); hydriodic acid (CAS Reg. No. 10034-85-2); sodium *N*-cyclohexyl-*N*-palmitoyl taurate (CAS Reg. No. 132-43-4); chloroacetic acid, sodium salt reaction products with 4,5-dihydro-2-undecyl-1*H*-imidazole-1-ethanol and sodium hydroxide (CAS Reg. No. 68608-66-2); dodecylbenzene sulfonic acid (CAS Reg. No. 27176-87-0); phosphoric acid (CAS Reg. No. 7664-38-2); isopropyl alcohol (CAS Reg. No. 67-63-0); and calcium chloride (CAS Reg. No. 10043-52-4). In addition to use on food-processing equipment and utensils, this solution may be used on dairy-processing equipment.

(c) * * *

(35) Solutions identified in paragraph (b)(40) of this section shall provide when ready for use not less than 12.5 parts per million and not more than 25.0 parts per million of titratable iodine; and not less than 2.7 parts per million and not more than 5.5 parts per million of dodecylbenzene sulfonic acid. All components shall be present in the following proportions: 1.0 part dodecylbenzene sulfonic acid to 43 parts sodium *N*-cyclohexyl-*N*-palmitoyl taurate to 7.7 parts chloroacetic acid, sodium salt, reaction products with 4,5-dihydro-2-undecyl-1*H*-imidazole-1-ethanol and sodium hydroxide to 114 parts phosphoric acid to 57 parts isopropyl alcohol to 3.0 parts calcium chloride.

Dated: August 4, 1992.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92-18856 Filed 8-7-92; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Judge Advocate General of the Navy has determined that USS LAKE ERIE (CG 70) is a vessel of the Navy which, due to its special construction and

purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a naval cruiser. The intended effect of this rule is to warn mariners in water where 72 COLREGS apply.

EFFECTIVE DATE: July 16, 1992.

FOR FURTHER INFORMATION CONTACT: Captain R.R. Rossi, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400, Telephone number: (703) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Judge Advocate General of the Navy, under authority delegated by the

Secretary of the Navy, has certified that USS LAKE ERIE (CG 70) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS, Annex I, section 3(a), pertaining to the location of the forward masthead light in the forward quarter of the ship, the placement of the after masthead light, and the horizontal distance between the forward and after masthead lights, without interfering with its special functions as a naval cruiser. The Judge Advocate General of the Navy has also certified that the aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is

impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine Safety, Navigation (Water).
Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR part 706 is amended as follows:

1. The authority citation for 32 CFR part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 3706.2 [Amended]

2. Table Five of § 706.2 is amended by adding the following vessel:

TABLE FIVE

Vessel	Number	Masthead lights not over all other lights and obstructions. Annex I sec. 2(f)	Forward masthead light not in forward quarter of ship Annex I sec. 3(a)	After masthead light less than 1/2 ship's length aft of forward masthead light Annex I, sec. 3(a)	Percentage horizontal separation attained
USS Lake Erie.....	CG 70.....	N/A	X	X	38

Dated: July 16, 1992.

Approved:

J.E. Gordon,

Rear Admiral, JAGC, U.S. Navy, Judge Advocate General.

[FR Doc. 92-18830 Filed 8-7-92; 8:45 am]

BILLING CODE 3810-01-M

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Judge Advocate General of the Navy has determined that USS PIONEER (MCM 9) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a

mine countermeasures ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: July 16, 1992.

FOR FURTHER INFORMATION CONTACT: Captain R.R. Rossi, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alex., VA 22332-2400, Telephone number: (703) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Judge Advocate General of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS PIONEER (MCM-9) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS, Annex 1, section 3(a), pertaining to the placement of the after masthead light and the horizontal distance between the forward and after masthead lights, without interfering with its special functions as a Navy ship. The Judge Advocate General of the Navy has also

certified that the aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this ship in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine Safety, Navigation (Water).
Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [AMENDED]

2. Table Five of § 706.2 is amended by adding the following vessel:

TABLE FIVE

Vessel	Number	Masthead lights not over all other lights and obstructions. Annex I sec. 2(f)	Forward masthead light not in forward quarter of ship. Annex I sec. 3(a)	After masthead light less than 1/2 ship's length aft of forward masthead light. Annex I, sec. 3(a)	Percentage horizontal separation attained.
USS PIONEER	MCM 9				64

Dated: July 16, 1992.

J.E. Gordon,

Rear Admiral, JAGC, U.S. Navy, Judge Advocate General.

[FR Doc. 92-18829 Filed 8-7-92; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD1 92-096]

Safety Zone: Narragansett Bay, RI

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone in Narragansett Bay, RI, during the fireworks display that will take place following the Navy Band Newport's "Salute to Summer" concert on August 28, 1992, at the Naval Education and Training Center in Newport. The safety zone will consist of the waters within a 500 yard radius around the fireworks launch site in approximate position (41-30-25N, 71-19-46W). The safety zone is needed to protect pleasure craft and personnel onboard these vessels from potential hazards associated with a fireworks display.

EFFECTIVE DATE: This regulation is effective at 8 p.m. on August 28, 1992, and will terminate at 10 p.m. on August 28, 1992, unless terminated sooner by the Coast Guard Captain of the Port Providence. If the event is postponed due to inclement weather, the raindate is September 4, 1992, and the safety zone will be effective on September 4, 1992, between the hours of 8 p.m. and 10 p.m. unless terminated sooner by the Captain of the Port Providence.

FOR FURTHER INFORMATION CONTACT: LTJG T.M. Burke of Marine Safety Office Providence at (401) 528-5335.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this regulation are LTJG T.M. Burke, Project Officer for the Coast Guard Captain of the Port

Providence and LCDR J. Astley, Project Attorney, First Coast Guard District Legal Office.

Regulatory History

As authorized by 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent potential damage to the vessels and personnel in the vicinity of the fireworks display. In addition, the Coast Guard was informed of this event on July 23, 1992, which is insufficient notice to provide for full public participation in this rulemaking effort. This event is significant because it represents a culmination of the Navy Band Newport's annual summer concert series and provides the naval community in Newport, as well as the general public, the opportunity to recognize the Navy Band Newport's contributions to the community. The fireworks are being held in conjunction with the Navy Band Newport's last concert for the summer and delaying the fireworks display would make them meaningless. In addition, as explained below in the regulatory evaluation, this regulation places only minimal burden on vessel traffic. Therefore, good cause exists for not making this rule effective thirty days after publication.

Background and Purpose

On August 28, 1992, the Naval Education and Training Center in Newport is sponsoring a fireworks display to be held following the Navy Band Newport's "Salute to Summer" concert. The "Salute to Summer" is the final concert in the summer 1992 series and the fireworks display serves to pay proper tribute to the ending of summer and to the efforts of the Navy Band Newport throughout the summer season. The concert and the fireworks are open to the public and significant public attendance is expected. The fireworks will be launched from the southwest corner of the Naval War College and the

display will take place between the hours of 9 p.m. and 10 p.m. on August 28, 1992. The raindate is September 4, 1992.

The Coast Guard is establishing a safety zone on the waters within a 500 yard radius around the fireworks launch site, approximate position (41-30-25N, 71-19-46W). This regulation is needed to protect the spectator vessels in the vicinity, as well as personnel onboard these vessels, from damage or personal injury due to the potential hazards associated with a fireworks display. These potential hazards include, but are not limited to, personal injury and fire aboard vessels in the area as a result of stray projectiles or hot/burning falling debris. The safety zone will be in effect between the hours of 8 p.m. and 10 p.m. on August 28, 1992. If the fireworks display is postponed due to inclement weather, the safety zone will be in effect from 8 p.m. to 10 p.m. on September 4, 1992.

Regulatory Evaluation

This rule is not major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a Regulatory Evaluation is unnecessary. The Coast Guard expects the economic impact to be minimal on all entities. The Coast Guard expects the economic impact of this regulation to be minimal due to the limited duration of the zone, specifically two hours on one day. Also, the area of water enclosed in the safety zone is close to the shoreline and is not transited by commercial vessel traffic. Spectator vessels that might wish to transit through or to anchor in the waters inside the safety zone will be required to remain at least 500 yards from the launch site at the Naval War College. These vessels are able to transit through alternate areas or to anchor to view the display at any location outside the zone. Therefore these vessels will not experience undue hardship.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). For the reasons outlined in the Regulatory Evaluation, the Coast Guard expects the impact to be minimal on all entities. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Federalism

The Coast Guard has analyzed this final rule in accordance with the principals and criteria contained in Executive Order 12612, and has determined that this final rule does not have sufficient federalism implication to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under section 2.B.2.C of Commandant Instruction M16475.1B, this final rule will have no significant impact and is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water) Records and recordkeeping requirements, Security measures, Waterways.

Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5.

2. A new § 165.T01-096 is added to read as follows:

§ 165.T01-096 Safety Zone: Narragansett Bay, RI.

(a) Location: The following area is a safety zone: The area of water within a 500 yard radius of the fireworks launch site, approximate position (41-30-25N, 71-19-46W).

(b) Effective Date: This regulation is effective at 8 p.m. on August 28, 1992. It terminates at 10 p.m. on August 28, 1992, unless terminated sooner by the Coast Guard Captain of the Port Providence. If the event is postponed due to inclement weather, the safety zone will be in effect between the hours of 8 p.m. and 10 p.m. on September 4, 1992, unless terminated sooner by the Captain of the Port Providence.

(c) Regulations: The general regulations governing safety zones contained in § 165.23 apply.

Dated: July 29, 1992.

H.D. Robinson,

Captain, U.S. Coast Guard, Captain of the Port.

[FR Doc. 92-18792 Filed 8-7-92; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

[CGD1 92-056]

Safety Zone: East Passage, Narragansett Bay, RI

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary moving safety zone around the band of swimmers involved in the 16th annual Swim the Bay, on August 22, 1992, between 9 a.m. and 11 a.m. This zone is needed to protect the swimmers, as well as the rowboats escorting the swimmers, from personal injury or damage due to collision that may result if vessel traffic were allowed to transit the East Passage of Narragansett Bay, in the vicinity of the swim, while the event is in progress.

EFFECTIVE DATE: This regulation is effective between the hours of 9 a.m. and 11 a.m. on August 22, 1992, unless terminated sooner by the Captain of the Port. If the event is postponed due to inclement weather, the safety zone will be in effect between the hours of 9 a.m. and 11 a.m. on August 23, 1992.

FOR FURTHER INFORMATION CONTACT: LTJG Tina Burke of Marine Safety Office Providence at (401) 528-5335.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are LTJG T. Burke, Project Manager for the Coast

Guard Captain of the Port Providence, and LCDR J. Astley, Project Counsel for the First Coast Guard District Legal Office.

Regulatory History

On June 22, 1992, the Coast Guard published a notice of proposed rulemaking entitled Safety Zone: East Passage, Narragansett Bay, RI, in the *Federal Register* (57 FR 27721). The Coast Guard received no letters commenting on the proposal. A public hearing was not requested and one was not held. There is good cause for this final rule to become effective on the dates specified, prior to thirty days after publication. This rule must become effective on the dates specified in the interest of marine safety, to ensure the safety of persons involved in Swim the Bay as well as the safety of other marine interests that may be transiting the East Passage of Narragansett Bay during the event. The public was given adequate notice of the event by the notice of proposed rulemaking, which encompassed a full comment period. By affording the public the proper opportunity to comment (comment period ended July 22, 1992), it is impracticable to publish this final rule thirty days prior to the event. Therefore, good cause exists for not making this temporary final rule effective thirty days after publication.

Background and Purpose

On August 22, 1992, the Save the Bay organization will be sponsoring the 16th annual "Swim the Bay." For this event, approximately 130 people will swim across the East Passage of Narragansett Bay, from the Coaster's Harbor Island Beach, Newport, to Jamestown Island in the vicinity of Potter's Cove. Each swimmer will be escorted by a rowboat with a spotter onboard, and orange pylons will be placed along the swim route, outside of the main ship channel, to facilitate swimming/rowing a straight course. The swim will take place between 9 a.m. and 11 a.m. on August 22, 1992. All swimmers will be limited to these two hours to complete the swim. In the event of fog or lightning, the swim will be postponed until August 23, 1992, during the same time period. Approximately 10 spectator craft are expected to attend.

The Coast Guard is establishing a temporary moving safety zone around the band of swimmers and escort craft involved in Swim the Bay. The zone will encompass a three hundred yard radius around the swimmers participating in the event and the associated craft as they cross the East Passage from

Coaster's Harbor Island Beach (position 41-31N, 071-19.8W) to Potter's Cove (position 41-31N, 071-22W). The safety zone will be in effect between the hours of 9 a.m. and 11 a.m. on August 22, 1992. If the event is postponed due to fog or lightning, the same safety zone will be established on August 23, 1992, during the same time period. This safety zone is necessary to protect the participants and associated craft involved in Swim the Bay from inherent dangers (personal injury or property damage due to collision) associated with vessels transiting the area of such an event.

Discussion of Comments and Changes

None.

Regulatory Evaluation

This proposal is not major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a Regulatory Evaluation is unnecessary. Although the proposed safety zone affects the main shipping channel through the East Passage of Narragansett Bay, the impact is expected to be minimal for several reasons. First, the large commercial vessel traffic interests that would normally use the affected waterway have been given 2½ months advance notice of the event and the pending safety zone/channel closure. This is more than sufficient time for these entities to schedule commercial ship transits around the safety zone time period. Second, the other interests to be affected, the recreational vessels, spectator craft, small passenger vessels, and perhaps fishing vessels, will not endure any undue hardship because they have an unlimited amount of alternate water, outside the limits of the safety zone, in which they may safely operate. Lastly, the impact of the proposed safety zone on any particular area of the waterway will be of limited duration due to the short time frame of the event and also due to the nature of a moving safety zone. Once the moving zone has passed, vessels desiring to use the channel will have the opportunity to transit.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and

that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). For the reasons outlined under REGULATORY EVALUATION, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under section 2.B.2.c of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Records and recordkeeping requirements, Security measures, Waterways.

Proposed Regulations

In consideration of the foregoing, part 165 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-8, and 160.5.

2. A § 165.T01-056 is added to read as follows.

§ 165.T01-056 Safety Zone: Rhode Island; Lower Narragansett Bay, East Passage

(a) Location: The following area is a safety zone: A moving safety zone encompassing a three hundred yard radius around the swimmers and associated craft participating in Swim the Bay, as they transit from Coaster's Harbor Island Beach (position 41-31N, 071-19.8W) to Potter's Cove (position 41-31N, 071-22W).

(b) Effective Date: This regulation is effective between the hours of 9 a.m. and 11 a.m. on August 22, 1992, unless terminated sooner by the Captain of the

Port. If the event is postponed from August 22, 1992, due to weather, this regulation will be effective between the hours of 9 a.m. and 11 a.m. on August 23, 1992, unless terminated sooner by the Captain of the Port.

(c) Regulations: The general regulations governing safety zones contained in § 165.23 apply.

Dated: July 29, 1992.

H.D. Robinson,

Captain, U.S. Coast Guard, Captain of the Port, Providence, RI.

[FR Doc. 92-18790 Filed 8-7-92; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6939

[AK-932-4214-10; AA-53289]

Revocation of Executive Order No. 8597, as Amended; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes in its entirety an Executive order which established the Kodiak Naval Airspace Reservation for defense purposes for the Department of the Navy at Kodiak, Alaska. The Kodiak Naval Airspace Reservation is no longer needed for the purpose for which it was established. This order is for record clearing purposes.

EFFECTIVE DATE: August 10, 1992.

FOR FURTHER INFORMATION CONTACT:

Sandra C. Thomas, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513-7599, 907-271-5477.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Executive Order No. 8597, as amended, which established an airspace reservation for national defense and other governmental purposes is hereby revoked insofar as it affects the airspace over the following described area:

Kodiak, Alaska

U.S. Survey No. 2539.

The area described contains approximately 34,700 land and water acres.

Dated: July 22, 1992.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 92-18814 Filed 8-7-92; 8:45 am]

BILLING CODE 4310-JA-M

43 CFR Public Land Order 6940

[AK-932-4214-10; AA-2793]

Partial Revocation of Public Land Order No. 829, as Amended, for Selection of Land by the State of Alaska; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a public land order insofar as it affects approximately 76.50 acres of National Forest System land withdrawn for use by the Forest Service, Department of Agriculture, for the Colorado Creek Recreation Area. The land is located adjacent to the Seward-Anchorage Highway. The land is no longer needed for the purpose for which it was withdrawn. This action also opens the land for selection by the State of Alaska, if such land is otherwise available. Any land described herein that is not conveyed to the State will be subject to the terms and conditions of the national forest reservation and any other withdrawal of record.

EFFECTIVE DATE: August 10, 1992.

FOR FURTHER INFORMATION CONTACT:

Sandra C. Thomas, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513-7599, 907-271-5477.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Public Land Order No. 829, as amended, is hereby revoked insofar as it affects the following described land:

Seward Meridian

Located within the N $\frac{1}{2}$ of Sec. 5, T. 6 N., R. 1 W. (unsurveyed), and Sec. 32, T. 7 N., R. 1 W. (unsurveyed), more particularly described as:

A tract of land which lies adjacent to the Seward-Anchorage Highway, 9.00 chains in width, on the west right-of-way line, parallel to and 50 feet from the center line of the highway, and 85.00 chains in length, between Station 924 and 980 + 10, approximate latitude 60°39' N., longitude 149°30' W.

The area described contains approximately 76.50 acres.

2. Subject to valid existing rights, and any other withdrawal of record, the land

described above is hereby opened for selection by the State of Alaska under the Alaska Statehood Act of July 7, 1958, 48 U.S.C. note prec. 21 (1988).

3. The State of Alaska application for selection made pursuant to section 906(e) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. 1635(e) (1988), becomes effective without further action by the State upon publication of this public land order in the Federal Register, if such land is otherwise available. Land not conveyed to the State will be subject to the terms and conditions of the Chugach National Forest reservation and any other withdrawal of record.

Dated: July 22, 1992.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 92-18813 Filed 8-7-92; 8:45 am]

BILLING CODE 4310-JA-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MM Docket No. 82-434; FCC 92-262]

Network-Cable Cross-Ownership Rule

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission in this Report and Order modifies § 76.501(a)(1) of its rules, which prohibits common ownership of cable television systems and national television networks (the "network-cable cross-ownership rule"). In light of significant changes that have occurred in the video marketplace since the rule's adoption in 1970, the Commission concludes that the rule in its current form is no longer needed to achieve its original objectives: To curb network dominance of the video marketplace and to protect the cable industry in its incipient stage of development. In addition, we believe that substantial public benefits—such as healthier, more diversified network operations and increased cable competition—could occur through relaxing the cross-ownership restriction. As a result, the Commission will revise the rule to permit networks to own cable systems, provided that no such combination exceeds 10% of homes passed by cable nationwide, and 50% of homes passed by cable within an ADL. We will not apply the local limit to instances where the network-owned cable system faces a "competing" system.

EFFECTIVE DATE: August 31, 1992.

FOR FURTHER INFORMATION CONTACT:

Jim Coltharp, Mass Media Bureau, Policy and Rules Division, (202) 632-6302.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order in MM Docket No. 82-434 adopted June 18, 1992, and released July 17, 1992. The complete text of this Report and Order is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC, and also may be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1114 21st Street NW., Washington, DC 20036.

Synopsis of Report and Order

1. This Report and Order relaxes § 76.501(a)(1) of our rules, which prohibits common ownership of cable television systems and national television networks (the "network-cable cross-ownership" rule). In light of significant changes that have occurred in the video marketplace since the rule's adoption in 1970, we conclude that the rule in its current form is no longer needed to achieve its original objectives: To curb network dominance of the video marketplace and to protect the cable industry in its incipient stage of development. In addition, we believe that substantial public benefits—such as healthier, more diversified network operations and the potential for increased cable competition—could occur through relaxing the cross-ownership restriction. Therefore, we decide to allow significant network entry into cable television ownership subject to judicious structural constraints. Accordingly, we will permit networks to own cable systems, provided that no such combination exceeds (i) 10% of homes passed by cable nationwide, and (ii) 50% of homes passed by cable within an ADL. We will not apply the local limit to instances where the network-owned cable system faces a "competing" system. These measures should effectively prevent potential abuses by network-cable owners by reducing those owners' incentives to pursue various discriminatory practices. However, as an additional measure, we will entertain petitions for special relief in order to remedy any individual instances of anticompetitive action in deleting or repositioning local broadcast signals on network-owned cable systems. Where we find that anticompetitive conduct has occurred, we will order the cable operator to carry the station, or to carry it on its former channel, as appropriate.

Finally, in three years we will review the continued necessity of retaining these restrictions on the broadcast networks' participation in the cable industry.

2. When the Commission adopted the rule prohibiting network-cable cross-ownership in 1970, it expressed a general concern that: (i) Network ownership of cable systems could inhibit the cable industry's growth and competitiveness during a critical stage of development, (ii) the networks already dominated the video marketplace, and (iii) the networks could restrict the amount of competing programming supplied by their cable systems or refuse to carry a rival network's programming. In the early 1980's, several studies questioned the necessity of the cross-ownership rule and emphasized the increasing competition within the video marketplace. The earlier Notices in this proceeding cited these studies and proposed to eliminate the rule because of growth in the video marketplace as well as cable television's development. At the same time, the Commission solicited comments on any intervening economic and regulatory developments in the video marketplace that were relevant to the continued validity of the rule.

3. In December 1991, in response to continuing fundamental changes within the video marketplace, the Commission's Second Further Notice of Proposed Rulemaking (57 FR 868, January 9, 1992) observed that eliminating the rule could enhance network efficiency and generate public benefits. However, we also recognized concerns raised in this proceeding by various parties that repealing the cross-ownership restriction could undermine competition and diversity in local and national video markets. Therefore, we invited comment on the rule's continued validity, as well as on options that would permit cross-ownership subject to various constraints, including allowing networks to own cable systems (i) in "large" or "competitive" markets, or where second competitive cable systems exist; (ii) up to a national subscriber limit, or (iii) according to must carry and discrimination safeguards.

4. Throughout this proceeding, we, as well as many of the commenting parties, have questioned the continued validity of the rule's original justification: To prevent network dominance or undue concentration in the video marketplace, and to promote growth in the infant cable industry. Given the competitive conditions of the contemporary video marketplace, we believe that this

rationale has been seriously undermined. Indeed, we observe that most commenters agree that the rule's rationale is no longer sufficient to sustain a *per se* prohibition against network-cable cross-ownership. In particular, the changing structure of the video marketplace is well-documented, with over 10,000 cable systems now operating in the United States, compared to 2,490 systems in 1970. Meanwhile, the broadcasting industry has grown from 962 to nearly 1500 television stations between 1976 and 1991. As viewer choices have increased, the broadcast networks' audience shares and real advertising revenues have fallen significantly in the last decade. These developments convince us that the rule is no longer needed to protect a struggling cable industry, as it was originally designed to do, because the video marketplace now includes broadcast and cable industries that are both large and mature.

5. We further conclude that allowing networks to own cable systems in certain situations could affirmatively promote competition in the video marketplace and provide other public interest benefits. First, network ownership of cable systems would create opportunities for the broadcast networks to diversify their operations and to gain access to additional revenue sources. In addition, the public is likely to benefit from network entry as a result of the networks' related expertise in distributing programming to consumers, producing news broadcasts and other programming, and coordinating operations with affiliated stations. Although parties have questioned the extent of the networks' expertise in operating cable systems, we believe that their experience is sufficiently related to place the networks among the most likely potential entrants into cable delivery. Moreover, as the networks develop more viable operations by adding another stable revenue source, we believe that the video marketplace could benefit from a more secure broadcast network structure, which again could enhance the quality and diversity of video programming available to viewers.

6. Significant network entry into cable ownership are also important in view of the many technological and service innovations that appear imminent in the cable industry, which will enable the broadcast networks to compete more effectively in the rapidly evolving video marketplace of the future. Such innovations not only will permit cable operators to offer video-on-demand, but they may also enable cable systems to

offer a wide range of advanced video, voice, data, and other telecommunications services. The Commission has also previously observed that cable service has benefited from vertical integration between system operators and programmers, and the earlier Notices in this proceeding supported proposals to eliminate the rule by stating that similar economies could occur through network entry. Specifically, we have stated that cable subscribers have benefited from MSO investment that has generated more original programming and a wealth of new viewing options for consumers. Furthermore, vertical integration enables cable operators to improve the quality of their existing program services through increased program payments, if they believe that such investments will increase their market penetration.

7. We recognize that parties seeking to retain the rule raise arguments that large cable MSOs and the broadcast networks control many of the outlets for distributing programming in the video marketplace. We do not believe, however, that we must maintain an absolute prohibition against network-cable cross-ownership in order to protect competition and diversity. Indeed, while the networks remain a significant force in the video marketplace, we have accumulated substantial evidence that documents the increasing competitive pressures that they face, as well as the vast changes in the market that have occurred since the cross-ownership rule was established. We thus conclude that network participation in the cable industry is unlikely to cause networks to create an undue concentration of power in the video marketplace, particularly in view of the large number of cable MSOs that now operate nationwide, as well as the conditions we impose on network entry that are described below.

8. The arguments to retain the rule also focus on concerns that network-cable combinations could harm broadcasters in the local marketplace through various discriminatory practices, thus restricting competition and diversity in the video marketplace. Although the various scenarios for discrimination and bypassing could conceivably occur, we believe that their merit as arguments to retain the rule is questionable because the strategies are inconsistent with one another and are contrary to the economic interests of network-cable owners. In addition, any abuses by network-cable owners would most likely occur in limited instances, which we could address through more

specific measures rather than by retaining the current prohibition on cross-ownership.

9. We have concluded in this Report and Order that the rationale for the network-cable cross-ownership rule is no longer sufficient to sustain a *per se* prohibition against network entry into cable ownership. The Commission relied upon this same rationale when it adopted a rule to prohibit cross-ownership of broadcast television stations and cable systems that reach areas within the broadcast station's area of service. Therefore, for the reasons detailed above, we believe that the rationale for an absolute prohibition on broadcast-cable cross-ownership is no longer valid in light of the ongoing changes in the video marketplace. We also agree with Chris-Craft that the networks, local broadcasters, and cable operators each compete for viewers, advertising, and programming, and thus, that local broadcasters should have opportunities to enter the cable industry to the same extent as broadcast networks. We recognize, however, that the Cable Communications Policy Act of 1984 codified the Commission's broadcast-cable cross-ownership rule, and we accordingly lack jurisdiction to alter it in any way. Therefore, we recommend that Congress repeal the broadcast-cable cross-ownership rule to permit us to allow local broadcasters to own cable systems in their service areas.

10. Based on this proceeding's record, we adopt a 10% national limit on homes passed by cable systems owned by a network in order to foreclose the potential national dominance of network-cable owners and, thereby, to promote diversity in the video marketplace. The broadcast networks have already established a significant ownership presence in the video marketplace through their owned-and-operated stations, and we believe that a national ownership limit will allow the networks to complement their existing operations without accumulating an undue portion of the outlets for delivering video programming. We note that commenters generally agree that any restrictions imposed in place of the cross-ownership rule should include a national ownership cap. We believe that the 10% limit on homes passed is a reasonable threshold that will not only permit opportunities for network entry into cable, but will also allow for growth to increase the potential benefits to the public from diversified network investments. We recognize that a national base of "cable subscribers" is more readily measurable than the

"homes passed" base. However, we believe that, unlike a "homes passed" approach, a subscriber test—especially in the context of applying both national and local ownership standards—could discourage network-owned cable systems from adding subscribers. In addition, because a threshold measured according to "subscribers" is fundamentally less stable than a measure defined by "homes passed," we will use a "homes passed" standard for applying the new ownership standards.

11. We will adopt a 50% local limit on homes passed in an ADI by cable systems that are owned by networks. As described above, we will not apply any local limit to instances where the network-owned cable system faces a "competing" system. We note that the affiliates and INTV believe that a limit on homes passed in an ADI, in addition to national limits, would prevent bypassing because a network could not purchase enough cable systems in a market to reach an area equivalent to the reach of the local broadcast station. This restriction would thus address one of the major concerns of parties seeking to retain the rule. In addition, we believe that the local ownership cap could provide a competitive constraint to address carriage and channel positioning concerns. Specifically, network-cable operators that encompass only a portion of an ADI market—or an area smaller than the affiliate's coverage—would arguably have incentives to treat affiliates and other local broadcast stations no less favorably than non-network owned cable systems. We recognize that some parties contend that local caps are redundant if behavioral restrictions are used. However, we believe that local caps are necessary at the outset of this rule change and preferable to the other behavioral restrictions proposed in the Second FNPRM and the additional measures suggested by commenters.

12. We also proposed in the Second FNPRM to permit networks to own local cable systems subject to must carry requirements or other anti-discrimination measures. We believe that the local ownership limit adopted in this Report and Order will mitigate most carriage and channel positioning concerns by preventing network-cable operators from acquiring cable systems that encompass an entire ADI. We also reiterate our belief that deliberate anticompetitive action by a network-cable entity against local broadcast television stations would undermine the value of the network's cable system. Nevertheless, even with the local limits in place, we recognize the possibility

that specific, isolated instances of anticompetitive practices against individual local stations could occur. In order to deal with any such situations, we will adopt a narrowly-drawn remedy that requires network-owned cable operators who have dropped or repositioned a local station for anticompetitive reasons to restore the station to its prior carriage status. We will take this action upon an appropriate showing by the local station that a failure to restore carriage or channel position would engender significant harm to the station. Therefore, we will entertain complaints from local broadcasters alleging harm as a result of anticompetitive conduct by a network-owned cable system with respect to non-carriage or channel repositioning.

13. We set forth the following procedures for the complaint process. First, an operator of a network-owned cable system must provide 30 days' notice to any local station when the operator proposes to drop the station from the system or reposition it to another channel. This notice will allow the local broadcaster time to assess the competitive impact of the action, and to prepare itself and its viewers for the change should it have no objection. Where the local station is dissatisfied with the cable operator's proposed action, we expect that the parties will utilize this period to reach a mutually agreeable resolution prior to the scheduled date for non-carriage or repositioning. Failure to comply with this notice requirement may be construed as evidence of anticompetitive intent by the system in taking the action against the station. Next, whenever a local broadcast station judges that it has suffered, or will suffer, competitive harm as a result of being dropped or repositioned by a network-owned cable system, the station may seek special relief from the Commission pursuant to § 76.7 of our Rules. We will confer standing upon trade associations to file such petitions on behalf of member stations that have been dropped or repositioned by network-owned cable systems.

14. The petition, in accordance with § 76.7 of our Rules, must state that: (1) A network-owned cable system has taken adverse action against the station (*i.e.*, it has dropped or repositioned the station's signal against the station's wishes), or conclusively indicated that it will take such action, and (2) the station has been or will be significantly harmed by the adverse action. In pleading this second element of the *prima facie* case against a cable operator, the complainant must provide factual

evidence showing that the station has lost or will lose access to a significant part of its audience as a result of the cable operator's adverse action. The complainant must also provide any evidence that would indicate that the cable operator's action was taken as a means of unfairly inhibiting competition for viewers, advertisers, and programming from the broadcaster in the local video market, rather than for legitimate business purposes. In its opposition, the network-cable operator may rebut the allegations by demonstrating that its actions were based not on anticompetitive reasons, but rather on legitimate efforts to serve the needs and interests of its subscribers.

15. In evaluating the request for special relief, we will consider, *inter alia*, the following factors: (i) The station's past and present ratings; (ii) whether the cable operator's programming decision was supported by subscriber surveys or other data; (iii) whether the cable operator replaced the station's signal with another broadcast station or cable channel in which the cable operator holds an equity interest, or whether the network owning such cable system has also bypassed the local station by providing network programming through its cable system; (iv) whether the cable operator can sell a significant amount of local advertising on the replacement channel; (v) the ratings and format of the replacement channel compared with the dropped or repositioned station; (vi) the cable system's channel capacity; (vii) whether the cable operator provided adequate notice to the broadcast station; (viii) whether the cable operator provided its subscribers with prior notice or received a substantial number of subscriber complaints; (ix) whether the station was moved to a channel that is not easily reached by the system's subscribers; and (x) whether other cable systems in the market had dropped, repositioned or refused to carry the station, and any justifications for such actions. We stress that this list of factors is merely illustrative and does not foreclose the Commission from weighing any other relevant factor in evaluating an individual broadcaster's complaint. Moreover, no single factor will necessarily be determinative; rather, we will reserve the discretion to weigh all pertinent factors in light of the particular circumstances of each case. Where we find that special relief is warranted, we will order the cable operator to restore the carriage or channel position of the local station.

16. We adopt the above measures rather than imposing other possible restrictions that were recommended by parties to remedy concerns that could result from repealing the rule. First, we believe that the above measures will adequately address problems regarding carriage and channel positioning. In addition, we recognize that NASA and INTV recommend several broad behavioral restrictions in addition to must carry and bypass protection, but we find that these measures are unnecessary in light of the other measures that we adopt in this Report and Order. Furthermore, these additional measures would essentially reimpose the cross-ownership rule by removing incentives for—or erecting substantial barriers to—network entry.

17. The restrictions implemented in this Report and Order are designed to address possible concerns regarding competition and diversity stemming from present conditions in the video marketplace. We believe that after a period of transition and further change in the marketplace, the limitations may prove unwarranted. Accordingly, three years from the adoption of this Report and Order, we will institute a proceeding, which will conclude within one year, to review the continuing necessity of retaining the revised rules on network participation in the cable industry. As part of our review, we will take particular interest in any evidence that network-owned cable operators have acted anticompetitively toward local broadcast stations.

Final Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980, the Commission's final analysis is as follows:

I. Need for and Purpose of This Action

This action is taken in response to questions regarding the continued validity of the network-cable cross-ownership ban in the midst of continuing fundamental changes and increased competition with the video marketplace. This Report and Order relaxes the rule to permit broadcast television networks to own cable systems, provided that such combinations do not exceed (i) 10% of homes passed by cable nationwide, and (ii) 50% of homes passed by cable within an ADI. We will not apply the local limit to instances where the network-owned cable system faces a "competing" system. We will also consider complaints from local broadcast stations that claim to have experienced competitive harm by a network-owned cable system with respect to non-carriage or channel repositioning.

Where we find that anticompetitive conduct has occurred, we will take remedial action, including ordering the cable operator to carry the station, or to carry it on a given channel, as necessary. In three years, we will review the continued necessity of retaining these restrictions on the broadcast networks' participation in the cable industry, given that the measures may prove unwarranted after a period of transition and further change in the video marketplace. Network ownership of cable systems in defined circumstances will serve the public interest by promoting healthier, more diversified network operations and increased competition to incumbent cable systems, and the limited structural restrictions will alleviate concerns of possible anticompetitive conduct by network-cable combinations.

II. Summary of Issues Raised by Comments in Response to the Initial Regulatory Flexibility Analysis, Commission Assessment, and Changes Made as a Result

A. Issues Raised

CCA/SBA states that the initial regulatory flexibility analysis did not uncover the significant potential harm that the proposed changes to the rule could impose on independent television stations and small businesses that advertise on them, small cable operators, wireless cable systems, and program producers.

B. Assessment

This Report and Order recognizes concerns raised by parties seeking to retain the cross-ownership rule, which claim that network-cable operators could use enhanced leverage to harm local broadcast stations through various discriminatory practices. The Commission concludes that the concerns regarding such possible practices are not sufficient to retain the rule, but, out of an abundance of caution, believes that some measured structural restrictions and complaint procedures are warranted to alleviate the potential harm to competition and diversity in the video marketplace.

C. Changes Made as a Result of Such Comments

The Commission modifies the cross-ownership rule to permit networks to own cable systems, provided that such combinations do not exceed the national and local standards for homes passed. The local unit will not apply to instances where the network-owned cable system faces a "competing" system. We are convinced that any lingering concerns

regarding competition and diversity in the video marketplace are best addressed through these measured structural constraints, which are readily applied and enforced. Moreover, we believe that these measures will mitigate the need for adopting broad behavioral measures to prevent potential abuses by network-cable owners because their incentives to pursue discriminatory practices would be greatly reduced. Nonetheless, in the event that such practices should occur, we will consider complaints from local broadcast stations that claim to have experienced competitive harm by a network-owned cable system with respect to non-carriage or channel repositioning. Where we find that anticompetitive conduct has occurred, we will take remedial action, including ordering the cable operator to carry the station, or to carry it on a given channel, as necessary.

III. Significant Alternatives Considered and Rejected

The Commission considered all the alternatives presented in the Second FNPRM and considered all the comments directed to the various issues in the Second FNPRM. Alternatives proposed by commenters that were less burdensome on network-cable operators, and which would not detract from the Commission's goal of ensuring that quality service is provided to the public, were adopted.

18. The Secretary shall send a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. 601 et seq., (1981)).

Ordering Clauses

19. Accordingly, *It is ordered* That, pursuant to sections 2(a), 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 152(a), 154(i), 303(r), part 76 of the Commission's Rules, 47 CFR part 76, is amended as set forth below, effective August 31, 1992.

20. *It is further ordered* That MM Docket No. 82-434 is terminated.

List of Subjects in 47 CFR Part 76

Cable Television.

Rule Changes

Part 76 of chapter I of title 47 of the U.S. Code of Federal Regulations is amended to read as follows:

1. The authority citation for part 76 continues to read as follows:

Authority 47 U.S.C. 154, 303.

2. Section 76.7 is amended by adding a new sentence to the end of paragraph (e) to read as follows:

§ 76.7 Special relief.

(e) * * * With respect to petitions filed relating to discontinuance of carriage of a broadcast signal, or repositioning a signal to another channel, by parties subject to § 76.501(b)(1), comments or opposition filings shall be due within fifteen (15) days and replies thereto within seven (7) days.

3. A new § 76.63 is added to read as follows:

§ 76.63 Notification.

Where the signal of a local television broadcast station, as described in § 76.5(gg)(1-3), is carried by a cable television system that is subject to the provisions of § 76.501(b)(1), the operator of such cable system shall provide written notice to the licensee of a local television station at least 30 days prior to either discontinuing carriage of the station's broadcast signal or carrying that signal on a different cable channel.

4. Section 76.501 is revised to read as follows:

§ 76.501 Cross-ownership.

(a) No cable television system (including all parties under common control) shall carry the signal of any television broadcast station if such system directly or indirectly owns, operates, controls, or has an interest in a TV broadcast station whose predicted Grade B contour, computed in accordance with § 73.684 of part 73 of this chapter, overlaps in whole or in part the service area of such system (i.e., the area within which the system is serving subscribers).

(b)(1) A cable television system (including all parties under common control) may directly or indirectly own, operate, control, or have an interest in a national television network (such as ABC, CBS, or NBC) only if such a system does not pass more than:

(i) 10 percent of homes passed on a nationwide basis when aggregated with all other cable systems in which the network holds such a cognizable interest, and

(ii) 50 percent of homes passed within any one ADI, except that a cable television system facing a competing system will not be counted toward this 50-percent limit.

(2) The requirements of paragraph (b)(1) of this section are applied at the acquisition date, except that a party with no prior attributable interests in a

broadcast network or cable systems may exceed these limits in connection with a purchase of these operations from a party with such existing network-cable interests. Paragraph (b) will not be applied so as to require divestiture of existing facilities.

(3) For purposes of paragraph (b) of this section:

(i) "Homes passed" is defined as the number of homes to which cable service is currently available whether or not a given household subscribed to the service.

(ii) "ADI" is defined as the Arbitron Area of Dominant Influence.

(ii) A "competing system" is faced by a network-owned cable system where the cable system provides service in the same area as another independently owned, multichannel video delivery system, as specified in § 76.33(a)(2)(ii). In order to be counted, such multichannel competitor must be capable of providing a package of local broadcast signals integrated within the service.

(c) Effective date. The provisions of paragraph (a) of this section are not effective until November 8, 1987, as to ownership interests proscribed herein if such interests were in existence on or before July 1, 1970, (e.g., if franchise were in existence on or before July 1970), and will be applied to cause divestiture as to ownership interests proscribed herein only where the cable system is directly or indirectly, owned, operated, controlled by, or has an interest in a non-satellite television broadcast station which places a principal community contour encompassing the entire community and there is no other commercial non-satellite television broadcast station placing a principal community contour encompassing the entire community.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92-18121 Filed 8-7-92; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

48 CFR Parts 332 and 333

Acquisition Regulation; Incremental Funding and Protests

AGENCY: Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: The Department of Health and Human Services is amending its acquisition regulation (HHSAR), title 48, Code of Federal Regulations, chapter 3, to make two administrative changes.

EFFECTIVE DATE: August 10, 1992.

FOR FURTHER INFORMATION CONTACT: Ed Lanham, Senior Procurement Analyst, Division of Acquisition Policy, telephone (202) 690-7590.

SUPPLEMENTARY INFORMATION: The Department is amending its acquisition regulation to clarify and update the policy regarding the application of the concept of incremental funding, and to correct an erroneous reference concerning protest procedures. The Department of Health and Human Services adheres to the policy that the public, or certain elements comprising it, should have the opportunity to provide comments on regulations which may have an impact on them. The Department has determined, however, that neither amendment in this rule will have a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of the Department. As a result, the Department is not requesting comments on these acquisition regulations, and is publishing them as a final rule.

The Department of Health and Human Services certifies this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.); therefore, no regulatory flexibility statement has been prepared. Furthermore, this document does not contain information collection requirements needing approval by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et. seq.). The provisions of this regulation are issued under 5 U.S.C. 301; 40 U.S.C. 486(c).

List of Subjects in 48 CFR Parts 332 and 333

Government procurement.

Accordingly, the Department of Health and Human Services amends 48 CFR chapter 3 as set forth below.

Dated: August 3, 1992.

Terrence J. Tychan,

Acting Deputy Assistant Secretary for Management and Acquisition.

As indicated in the preamble, chapter 3 of title 48 Code of Federal Regulations is amended as shown.

1. The authority citation for parts 332 and 333 continues to read as follows:

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

PART 332—[AMENDED]

332.702 [Amended]

2. Section 332.702 is amended by revising paragraph (a) to read as follows:

332.702 Policy.

(a) Incremental funding may be applied to cost-reimbursement type contracts for the acquisition of research and development and other types of nonpersonal, nonseverable services. It shall not be applied to contracts for construction services, architect-engineer services, or severable services. Incremental funding allows nonseverable cost-reimbursement contracts, awarded for more than one year, to be funded from succeeding fiscal years.

PART 333—[AMENDED]

333.103 [Amended]

3. Section 333.103 is amended by correcting the reference in paragraph (a)(4) to read "333.103(a)(3)."

[FR Doc. 92-18823 Filed 8-7-92; 8:45 am]

BILLING CODE 4150-04-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB42

Endangered and Threatened Wildlife and Plants; Retention of Threatened Status for the Continental Population of the African Elephant

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service announces its final decision on a February 16, 1989 petition requesting that all populations of the African elephant (*Loxodonta africana*) be elevated to endangered status under the U.S. Endangered Species Act. The Service has determined, based on the most current data available, that the most appropriate classification of the continental population of the African elephant is that it remain listed as threatened. The Service has also modified the current special rule to prohibit the import of African elephant ivory into the United States (this effectively reinforces the June 9, 1989 moratorium on the importation of African elephant ivory into the United

States under authority of the African Elephant Conservation Act); to not prohibit the possession of or interstate commerce in legally imported elephants or their products or parts; and to allow the importation of sport-hunted elephant trophies into the United States under prescribed conditions.

EFFECTIVE DATE: September 9, 1992.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, from 8 a.m. to 4 p.m., Monday through Friday, in Room 750, 4401 North Fairfax Drive, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane, Chief, Office of Scientific Authority; Mail Stop: Arlington Square, room 725; U.S. Fish and Wildlife Service; Washington, DC 20240 (phone 703-358-1708, FAX 703-358-2276).

SUPPLEMENTARY INFORMATION:

Background

The Fish and Wildlife Service (Service) was petitioned by Fund for Animals on August 18, 1977, to list the African elephant (*Loxodonta africana*) as endangered under the Endangered Species Act (Act), based primarily on the threat resulting from the commercial trade in elephant ivory. The Service, in response to that petition, conducted a status review and published a final rule on May 12, 1978 (43 FR 20499-20504) determining that the African elephant more appropriately met the criteria for a threatened species. The Environmental Impact Assessment prepared for that final rule stated that even though "the African elephant had been eliminated from much of its original range and is subject to severe overexploitation, there still are relatively large populations, some of them stable and well protected. An endangered classification thus would not accurately express the situation of this species." A special rule provided for the importation of African elephants and products thereof into the United States, for primarily commercial purposes, in accordance with an ivory control system established under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

The continental elephant population at that time was believed to total about 1.3 million animals with some populations stable and well-protected. Elephant populations in west Africa were considered fragmented, as populations occurred in remote border areas and/or in small isolated patches of suitable habitat. Elephant populations throughout the rest of Africa were

considered to be progressively losing land to expanding human populations and associated agricultural development. The offtake of elephants in 1978 clearly exceeded recruitment and the continental elephant population was diminishing. Few elephant management plans were developed or implemented and elephant protection and the ivory marketing control mechanisms were clearly inadequate.

The Service was again petitioned, on February 16, 1989, by the Humane Society of the United States, Animal Welfare Institute, International Wildlife Coalition, Animal Protection Institute, Society for Animal Protective Legislation, Friends of Animals, Inc., with support from other organizations, to reclassify the African elephant from threatened to endangered. The petition described continued declines in elephant populations because of continued illegal killing of elephants for the ivory trade and argued that the African elephant was endangered because of the continued threats resulting from that trade.

A variety of conservation efforts to curtail the illegal killing of elephants were initiated before and shortly after the petition was filed. Those actions, described below, included increased efforts by individual range countries to curtail poaching; ivory importation moratoria imposed by the United States, much of western Europe and Japan; and the transfer of the African elephant to CITES appendix I, which became effective in January 1990 and continues in effect.

The Service, in response to the February 1989 petition, conducted a status review and published a proposed rule (56 FR 11392-11401, March 18, 1991) stating that most populations of the African elephant (except for those in Botswana, South Africa and Zimbabwe, which remained as threatened) appeared endangered. Based on information available to the Service during its initial status review, the Service determined in the proposed rule that overutilization of the African elephant for commercial purposes was of sufficient threat to warrant reclassification of most populations to endangered. The Service evaluated this threat on a state by state basis, even though it was well-understood that elephants were not confined to political boundaries, because the level of protection provided to elephants and consequently the likelihood of overutilization varied between range states. The proposed rule indicated that the illegal killing of elephants to satisfy a worldwide demand for ivory severely

impacted and endangered many elephant populations. Both elephant population and tusk weight data indicated or suggested population declines, although it was pointed out that many data sets were anecdotal accounts of former populations and somewhat precise statements of present populations. Records of ivory commerce indicated that the kill of elephants in the 1970s and 1980s was at levels that could not be sustained by the continental elephant population. It was pointed out that overutilization was both a cause for placing a population in an endangered status and a factor which if controlled could result in that population being retained in a threatened status.

A second major threat identified in the proposed rule was the inadequacy of existing regulatory mechanisms within the range states. It was pointed out that the establishment and implementation of elephant conservation plans to help develop management and enhance the protection of elephants would benefit many populations. The Service additionally acknowledged that information describing the effects of the most recent actions to control the ivory trade was not available at the time that the status review was conducted, and that the Service required additional information about those effects before preparing the final rule. The Service indicated that if substantial new information became available during the comment period the final rule could be substantially different from the proposed rule. In order to facilitate this process, the comment period on the proposed rule was extended, and because substantial conflicts existed in the newly acquired information, the Service extended the 12-month deadline for making the final determination on the proposed rule.

During the extended comment period, over 50,500 comments were received including: Extensive new information from African elephant conservation plans and the African Elephant Conservation Review of elephant management in 30 range states; extensive materials provided by several African range states; updated editions of the African Elephant Database; current information about the extent of the illegal killing of African elephants after enhanced elephant protection measures and the January 1990 CITES international ivory trade ban were implemented; and reports of the CITES Panel of Experts on the African Elephant on their evaluation of the management of the species in southern Africa.

The final rule is different from the proposed rule. Foremost, the elephant population is considered on a continental basis and it is determined that its most appropriate classification is threatened. In 1992, the continental elephant population totals about 600,000 but the critical factor of overexploitation seems to be controlled because of: (1) Enhanced anti-poaching activities, (2) the CITES appendix I listing, and (3) various ivory import moratoria. There is substantial evidence that the illegal offtake of elephants on a continent-wide basis is significantly reduced and is probably somewhat less than recruitment. At present, several elephant populations remain stable and well-protected and other elephant populations seem to be increasing and perhaps are beginning to recolonize their former range. Elephant conservation plans have been developed for most range states and some plans are presently being implemented. Elephant protection has been enhanced in many areas and the ivory control mechanisms in the form of import moratoria and the control of international trade through CITES is determined to be functional and adequate. Generally, the same habitat threats exist in 1992 as existed in 1978 and continue to threaten the continental population of the African elephant. The west African elephant populations remain fragmented in isolated habitats and habitat loss still occurs throughout the remainder of the elephant's range because of expanding human populations and the increasing encroachments of agricultural development. Although elephant populations in 1992 are less than half those of 1978, a substantial elephant population of 600,000 still exists and the protection and management of those elephants is superior in 1992 to the conditions that existed in 1978, when the species was classified as threatened, and in 1989, when the Service was petitioned to reclassify. Just as in 1978, an endangered classification would not accurately express the situation of this species.

Summary of Comments and Recommendations

The initial 90-day comment period in the proposed rule published on March 18, 1991 (56 FR 11392-11401) was extended for 13 months (56 FR 33241, July 19, 1991; 57 FR 658-659, January 8, 1992; and 57 FR 9681-9682, March 20, 1992), to allow for receipt of information for development of a final rule and to resolve issues of conflicting data. State Department cables were sent to

American embassies in 26 range countries asking that the appropriate agencies in the range countries be officially notified of the proposed rule and requesting official comments. Copies of the proposed rule were also sent to each range country by diplomatic pouch. Representatives from 19 range countries in attendance at the African Elephant and Rhino Specialist Group Meeting in Gaborone, Botswana, on July 2-5, 1991, were also personally notified about the proposed rule.

A total of over 50,500 comments were received about a variety of issues pertinent to elephants. Most comments expressed concern and requested that the Service: (1) Provide endangered status for all populations of the African elephant (13,020 comments); (2) retain the importation ban on ivory and ivory products into the United States (17,625); (3) provide endangered status for all populations of the African elephant and keep the species on appendix I of CITES at the March 1992 CITES Conference (9,570); (4) retain the importation ban on ivory and ivory products and keep the species on appendix I of CITES (1,415); (5) provide endangered status for all populations of the African elephant and retain the importation ban on ivory and ivory products (270); (6) retain legally imported pre-ban (June 9, 1989) ivory in unrestricted interstate commerce and pre-empt individual states from enacting more restrictive regulation than those of the Federal government (630); (7) not place further restrictions on captive elephants (105); (8) retain threatened status for all populations of the African elephant (185); and (9) provide for the legal sport-hunting of African elephants (105). In addition, the Service received over 7,500 comments on the unrelated issue of retaining the African elephant on Appendix I at the March 1992 CITES Conference of Parties. The specific issues of interest varied through time. For example, the preponderance of responses received 2-4 months after publication of the proposed rule addressed listing preferences for the African elephant under the Act while most responses received eight or more months after the publication of the proposed rule addressed listing preferences for the African elephant under CITES.

A second and much smaller group of comments provided biological information that could be used in formulating this final rule (they are identified in References Cited) or which raised specific issues that required individual responses. The format of the final rule is substantially different from that of the proposed rule and many

comments that pertained to the logic used to develop the assessment process or the assessments made for individual countries in the proposed rule are only generally addressed in the following responses.

Comment 1.—Several comments criticized the proposed rule because it treated elephant populations as if they were contained within the borders of individual range states when in fact populations frequently move to or within two or more range states. They further argued that the Service should treat the continental elephant population as a single entity and provide a single classification that best represents the overall status of the elephant. The continental elephant population was said to face common threats and should be evaluated with regard to those threats.

Service Response.—The Service agrees the elephant population should be considered at the continental level. The proposed rule treated elephant populations on a range state by range state basis because the extent of exploitation and the quality of regulatory mechanisms varied among range states. It was an attempt to emphasize differences that existed at that time between states. Best data available at the time of the proposed rule indicated that only Botswana, South Africa and Zimbabwe had sufficient capabilities to control the overexploitation of elephants. Best data currently available suggest that overexploitation generally is controlled throughout the continent. Elephant conservation plans have been developed for most range states and have been implemented in varying degrees throughout the continent.

There is precedent for treating the African elephant on a continental basis. The 1978 final rule (43 FR 20499-20504), for example, treated the continental population as a single entity and found a threatened classification for the continental African elephant population. An additional reason for treating the African elephant as a single population is that controversy still exists about the systematics of the African elephant. For example, Smithers (1983) reviews taxonomic opinions on African elephants that variously describe (1) the forest elephant (*L. cyclotis*) as specifically distinct from the savannah, or bush, elephant (*L. africana*); (2) the two forms as conspecific because intergrading occurs where distributions overlap; and (3) a single species of African elephant with two subspecies, *L. a. africana* and *L. a. cyclotis*. Ansell (1971) states there may be five surviving

subspecies of *L. africana*. These are *cyclotis* in the forested areas of central Africa and four subspecies of the *L. africana* section: *africana* in southern Africa, *knochenhaueri* in eastern Africa, *orleans* which may still occur in Ethiopia, and *oxyotis* south of the Sahara and north of the equatorial lowland forest zones where *cyclotis* occurs. The Service, because of the imprecision in defining the range of individual elephant populations, the dissension about the taxonomy of the African elephant, and the new information available since the publication of the proposed rule, has assessed the African elephant as a single entity within the African continent.

Comment 2.—Several commentators questioned the accuracy of population estimates and the stated population levels within individual range states.

Service Response.—The Service used the best information available to develop the proposed rule. Significant new information has since become available and has been used to develop the final rule. The Service has, in the final rule, relied on data from the African Elephant Database (GRID, 1991; Douglas-Hamilton *et al.*, 1992) and from the conservation plans for individual range states for numerical estimates of populations. The African Elephant Database is coordinated by the European Commission African Elephant Survey and Conservation Project, in collaboration with the United Nations Environment Programme, the African Elephant Specialist Group and the World Conservation Monitoring Centre at Cambridge. The elephant conservation plans for individual states were produced with assistance from the African Elephant Conservation Coordinating Group with financial assistance from the U.S. Agency for International Development, the European Commission, the World Wildlife Fund and the U.S. Fish and Wildlife Service. It is generally accepted that these data sources are the best estimates of elephant populations currently available.

Comment 3.—The final rule under the Endangered Species Act should be consistent with the CITES classification.

Service Response.—The CITES appendix I listing for the African elephant was determined by an international vote under rules governing an international trade agreement. Appendix I status was maintained at the Kyoto, Japan, meeting in March 1992 because it did not seem possible, to a majority of the voting members, to market elephant products in a manner

that would not cause endangerment to the species. The listing of the African elephant under the Act is a biological assessment of the present threats to the species. CITES and the Endangered Species Act listings are not necessarily joined actions. The African elephant is being retained as threatened under the Act partly because of the effectiveness of the CITES appendix I listing in reducing pressures causing overexploitation of the African elephant resource.

Comment 4.—Several comments questioned the finding in the proposed rule that elephant populations in Botswana, South Africa, and Zimbabwe were threatened.

Service Response.—The elephant population in the three southern African countries was found to be threatened in the proposed rule using the best information then available. Since the publication of the proposed rule, the CITES Panel of Experts on the African Elephant (1991) found the South African elephant population to be viable, stable and under no current threat. The elephant population in Kruger National Park was acknowledged as one of the best monitored elephant populations in Africa and the resources and measures deployed to combat the illegal killing of elephants were found to be effective. The CITES Panel of Experts on the African Elephant (1992) found that Botswana's elephant population was viable and the panel identified no specific risks. Botswana was additionally found to have an acceptable population sampling system, a low level of poaching activity, and current anti-poaching measures that successfully kept poaching at low levels. Botswana's past and intended levels of offtake were found to be sustainable and the current illegal offtake was found to be negligible. Zimbabwe's national elephant population was also considered viable and the potential risks to that population were negligible (CITES Panel of Experts on the African Elephant, 1992). The panel found that Zimbabwe's Department of National Parks and Wild Life Management had a qualified staff and its aerial survey techniques were of high quality. Zimbabwe's current anti-poaching measures were considered the best in the region. Their effectiveness is indicated by the generally low numbers of elephants reported illegally killed over the last few years. The continuing stability of the southern African elephant populations and the reduced levels of overexploitation in other elephant populations are basic to the

decision to retain the current continental elephant population as threatened.

Comment 5.—Comments in petition forms were received from Zimbabwe and South Africa to delist the populations of African elephants within their borders.

Service Response.—The Office of the Solicitor has determined that petitions received on a species during an open comment period established for that species should be treated as comments. Consequently, the Service utilized the substantial information submitted about the status of elephants in Zimbabwe and South Africa in the formulation of the final rule but made no individual listing decision for elephants within those two range states. The Service has chosen not to evaluate populations in individual range countries in this finding. This action is consistent with the Service position described in response to Comment 1.

Comment 6.—The continental elephant population should be classified as endangered because it may only be about one half of that which existed in 1978 when the continental population was listed as threatened and/or its current range is only about 25 percent of its historic range.

Service Response.—About six hundred thousand elephants still occur on over 5 million square kilometers (2 million square miles) of suitable habitat, there is no substantial evidence that current offtake on a continental basis exceeds rates of elephant recruitment, and elephant management in individual range states varies from inadequate to very good across the continent. Populations with these characteristics are best classified as threatened.

Comment 7.—Some comments opposed the retention of a domestic United States interstate trade in legal pre-ban ivory.

Service Response.—The Service has no evidence that the continued interstate trade within the United States of legally imported African elephants and their parts and products will lead to ivory smuggling into the United States or fuel elephant poaching in Africa. The lack of a prohibition against interstate commerce does not imply support by the Service either for the resumption of the import of ivory into the United States or for the resumption of ivory trade in the world market.

Comment 8.—No sale of elephant products should be considered beneficial to conservation because realized funds are usually returned to the general treasury rather than directly applied to elephant management.

Service Response.—The most beneficial use of funds generated from the sale of any elephant product is their direct application to elephant management. Benefits also accrue to conservation, however, if monies returned to the general treasury cause governments to support effective elephant management in order to generate needed foreign exchange.

Comment 9.—The Service should support the nonconsumptive use of elephants throughout Africa by promoting ecotourism.

Service Response.—The Service supports both non-consumptive uses of African elephants as well as certain carefully regulated consumptive uses of African elephants as mechanisms for attaining revenues to enhance elephant and wildlife management throughout the African continent.

Comment 10.—Endangered species status is necessary because any other listing will lead to a reopening of the world trade in elephant products, especially ivory, which will lead to the extinction of the species. A threatened status would encourage the international trade in elephant products.

Service Response.—Maintaining threatened status for the African elephant under the Act effectively prohibits the importation of ivory or any elephant product into the United States unless an exception to that prohibition is provided by a special rule. The importation of worked or raw elephant ivory (except for sport-hunted trophies) into the United States is specifically prohibited by the moratorium established under the African Elephant Conservation Act (54 FR 24758-24761) and the present final rule creates no exceptions to the import prohibition. Neither a threatened nor an endangered listing under the Act would have any direct impact on international commerce that is not under United States jurisdiction. International commerce in African elephant products is regulated by the CITES appendix I listing.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be endangered or threatened on the basis of one or more of the five following evaluation factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) over utilization for commercial, recreational,

scientific, or educational purposes; (c) disease or predation; (D) the inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors affecting its continued existence.

The following assessment is largely based on new information that has become available to the Service since the publication of the proposed rule.

A. Present or Threatened Destruction, Modification or Curtailment of Its Habitat or Range.

Elephant range may at one time have extended over 21,250,000 square kilometers (8,202,500 square miles) of the African continent. This assumes that the 9,000,000 square kilometers (3,475,000 square miles) of Sahara Desert was never elephant habitat but assumes that all other land areas of the continent could have been elephant habitat. Ansell (1971) states that within the last three centuries the species occupied virtually all of sub-saharan Africa except the very dry sub-desert steppe of the Sudanese Arid zone, the desert and sub-desert parts of the Somali Arid zone and the coastal desert of the South West Arid Zone. The petitioners note (Humane Society of the United States *et al.*, 1989:29) that by the Middle Ages elephants had been exterminated from their habitats in North Africa by ivory hunters. Ansell (1971) states that the species became extinct north of the Sahara by the sixth century A.D. Douglas-Hamilton (1987) states that most elephants were eradicated from West Africa in the early years of the twentieth century. The ivory trade may have caused a population crash in west Africa by 1914. These conditions for northern and western Africa also existed in 1978 when the continental population of the African elephant was classified as threatened. The present elephant range is estimated to be about 5,188,000 square kilometers (2,002,500 square miles) (Douglas-Hamilton *et al.*, 1992) so the present elephant range is about 25 percent of the range that existed before the sixth century A.D. The present elephant range is still a vast area, nearly the size of the 39 states ranging from North and South Dakota, Wyoming, Colorado, Oklahoma and Texas east to the eastern coast of the United States. This is an area elephants can be expected to occur, not the bounds of an area containing fragments of habitats suitable for elephants. This vast area also contains a variety of cover types used by elephants. For example Douglas Hamilton *et al.* (1992) state that forest and forest-grasslands are the dominant habitat types in central Africa, bushland-thicketed mosaic and miombo woodlands

predominate in eastern Africa, miombo woodland and woodland mosaics predominate in southern Africa and Sudanian woodland and forests predominate in west Africa.

Cumming *et al.* (1990) describe the history of the elephant in Africa and link the historical decline of the elephant to the following three major factors: (1) The demand for ivory, which has often been at a level that is totally unsustainable; (2) desertification which has clearly been a major cause for the disappearance of the species in North Africa and the Sahara and continues to impact the small remaining populations in the Sahel; and (3) conflicts between elephant and humans for the use of the land. Although factor 3 may ultimately come to limit elephant populations, it is the ivory trade that historically has had the greatest impact on elephants.

Any assessment of the habitat of the continental population of the African elephant must consider the question of scale. Types of impacts are discussed below but often no quantifiable mention is made of the extent of an impact. The inability to discuss rates and extent of deforestation or rates and extent of habitat loss to agriculture, etc., further justifies evaluating the status of the African elephant on a continental basis. The discussion indicates that man's impact on the environment and elephant habitat is widely evident. Still, habitat destruction, modification or curtailment does not presently endanger the continental population of the African elephant. Expanded elephant populations could and probably would be tolerated in many African habitats.

East Africa

Seven eastern African countries presently have an estimated 96,000–134,000 elephants on about 1.1 million square kilometers (about 425,000 square miles) of habitat (Douglas-Hamilton *et al.*, 1992). A significant portion of this extensive habitat is in National Parks, Game Reserves and other protected areas.

Perhaps 2,000–2,450 elephants occur on about 119,000 square kilometers (46,000 square miles) of habitat mostly in forested areas in southwestern Ethiopia (AECCG Ethiopia, 1991). Elephants were widely distributed until the turn of the century so the present distribution is much reduced from historical levels. Problems of land-use conflicts between people and elephants are complicated by rapidly increasing human populations, poverty, civil unrest, inadequate protection and management of elephants, and a lack of public awareness of the need for conservation. Land degradation has occurred because

the dense human populations have put extensive pressures on natural resources and because of outdated agricultural practices.

About 25,800 elephants (Poole, 1992) presently occur in Kenya on about 413,000 square kilometers (159,000 square miles) of habitat. Elephants in some areas may become confined in Parks and Reserves surrounded by cultivation so that some populations may eventually have to be regulated (AECCG Kenya, 1991). Elephant range is extensive in Kenya and several communal lands, National Parks and Game Reserves provide important habitats for elephants. A new Community Wildlife Program has been initiated to enhance acceptance and management of wildlife species on private lands and communal lands around parks and Reserves. Kenya can probably support an elephant population twice the present population without adversely impacting available habitats or rural Kenyans.

National parks and reserves occupy more than 10 percent of the land area of Rwanda (AECCG Review, 1991). GRID (1991) lists the total protected area as about 2,700 square kilometers (about 1,050 square miles) and the Elephant Conservation Plan for Rwanda lists an elephant population of 80–100 animals. Rwanda is one of the most densely populated countries in Africa. The pressure of human populations and demands for cultivatable lands threaten the security of protected lands and the long term future of elephants in Rwanda.

Somalia represents the eastern extremity of the range of the African elephant. Elephant range has been significantly reduced since 1979 so that elephants now occur in about 56,000 square kilometers (21,600 square miles) of habitat in southern Somalia (AECCG Somalia, 1991). The surviving population of elephants numbering between 1,000–2,000 animals live within a 100 km-wide strip along the Kenyan border. The present range includes four dry season concentration areas and the swampy creeks of Bush Bush National park. This part of Somalia still contains sizeable areas of good habitat with adequate forage, water and shade that can support far larger elephant populations than presently occur.

Sudan is the largest country in Africa with 2.5 million square kilometers (965,000 square miles) of desert, savanna, bush, forest, mountain and swamp (AECCG Sudan, 1991). Sudan has a population of 27 million people and an elephant population that is variously estimated at 22,000–44,600. Several set-aside areas are protected by

remoteness, harsh climate and rugged terrain. Other areas are impacted by grazing, firewood harvesting, agriculture and general human encroachment. Sudan still provides extensive habitat for elephants, has ample set-aside areas that could be useful for elephant protection and management, and remains a potentially important habitat for elephants and other wildlife in the northern portion of Africa.

Elephant range presently occupies about 50 percent (501,000 square kilometers or 193,400 square miles) of the land area of Tanzania. About 25 percent of the total land area (245,000 square kilometers, 94,560 square miles) is designated to provide some degree of protective status to wildlife species like elephants (AECCG Tanzania, 1991). The growth of human populations and of agricultural developments around conservation areas have led to increased levels of human-elephant interactions and crop depredation which in turn directly leads to elephant mortality. The present elephant population in Tanzania is estimated at 44,000-57,000. The Wildlife Division believes it is appropriate to manage about 70,000 elephants in Tanzania (Mlay, 1992).

The political and conservation situation in Uganda has improved significantly since 1986 and efforts are being made to restore protected areas and the tourist industry based on those protected areas (AECCG Uganda, 1991). The Ugandan elephant population is believed to number 1,200-1,900 animals and to include both savanna and forest elephants. The preservation of habitat for the two forms will preserve habitat for many species. The intended policy of the government is to transfer the ownership of wildlife outside of reserves to the local people so they may manage their wildlife, with government advice, along the tenets of Zimbabwe's CAMPFIRE program.

Central Africa

About 268,000 elephants (Douglas-Hamilton *et al.*, 1992) are estimated to occur in Central Africa. GRID (1991) lists 1.7 million square kilometers of forest habitat and 1.2 million square kilometers of savanna habitat within the 7 countries of central Africa, a total habitat area equal to about 1.12 million square miles. More current data (Douglas-Hamilton *et al.*, 1992) indicate that the total elephant habitat in Central Africa is 2,560,000 square kilometers (988,000 square miles). Central Africa presents great potential but poses some serious problems for elephant management. Barnes (1991a) states that in the long term, threats to forest

elephants include: The expansion of roads, railways and pipelines; commercial plantations; logging; mining; and an expanding human population with its subsistence agriculture. Barnes (*op. cit.*) states that all these activities destroy potential elephant habitat, compete with elephants for land, fragment elephant habitats or provide access for poachers into otherwise inaccessible habitats. He considers the elephant to be a vital part of the forest ecosystem because it influences the structure and floristic composition of the forest and promotes biological diversity within the forest.

Cameroon has an area of 475,000 square kilometers (183,000 square miles) and a human population of 11.6 million (AECCG Cameroon, 1991). About 7,000 savanna elephants (Douglas-Hamilton *et al.*, 1992) may dwell in the thorny wooded savannas of middle Cameroon and in the grasslands of the floodplain south of Lake Chad in northern Cameroon. Perhaps 20,000 forest elephants (Douglas-Hamilton *et al.*, 1992) inhabit the dense, humid evergreen forest of extreme western Cameroon and the dense humid Congo forest of southern Cameroon. The evergreen Atlantic zone of low and mid-level forests in extreme western Cameroon has been extensively impacted by logging and human population pressures which have fragmented elephant habitats and reduced elephant populations. The evergreen cameroon-congolesse zone of medium altitude forest in southern and southeastern Cameroon which covers about 111,000 square kilometers (42,800 square miles) remains a stronghold for a substantial population of forest elephants.

Information about the status of the elephant in the Central African Republic (CAR) is fragmentary. The CAR contains 304,000 square kilometers (117,300 square miles) of savanna habitat and 40,000 square kilometers (15,500 square miles) of suitable forest habitat (GRID 1991). That publication lists an estimated elephant population of 14,500 in the CAR. Douglas-Hamilton *et al.* (1992) lists a population of 18,500. The CAR is subject to the same habitat problems as are other states in central Africa.

Elephant range formerly extended throughout much of southern Chad. Chad is one of the more northerly limits of present elephant habitat in Africa and shares savanna elephant populations with northern Cameroon and the Central African Republic. Fewer than 2,500 elephants are estimated to occur in 202,000 square kilometers (78,000 square miles) of potential habitat. Human

population pressures and desertification associated with the southward extension of the Sahara have pushed agriculture into southern Chad where human-elephant conflicts are increasing (AECCG Review, 1991).

The elephant historically occurred throughout the Congo but at present is found in only about 40 percent of the country. The present elephant population is estimated at about 49,000 animals and perhaps 40,000 of these are forest elephants that occur in the northern forest massif bordering Gabon, Cameroon and Zaire (AECCG Review, 1991). Human populations are low and concentrated along communication corridors in the dense, humid, evergreen forest. Principal threats to elephants in the Congo include growing human populations in the south and timber exploitation and habitat fragmentation associated with oil exploration and development. Timber exploitation is not now a threat but logging is increasing and could become a threat in the future.

Equatorial Guinea is a small country of 28,000 square kilometers (10,800 square miles) with a sparse human population (350,000) living within dense forest habitats. Most persons depend on traditional agricultural activities with major commercial products being cocoa, coffee, palm oil, cassava and timber. The country lies within the Congo rainforest and much of the forest remains intact as logging has not yet made serious impacts on forest resources (AECCG Equatorial Guinea, 1991). Elephants are concentrated in southern Equatorial Guinea in areas of primary forest. Elephants have shifted from the northern portion of the country because of agricultural practices and logging activities which have modified elephant habitat and created disturbances. The elephant population is listed at about 600 animals by Douglas-Hamilton *et al.* (1992).

Gabon probably has one of the largest populations of elephants (50,000-87,000) in Africa (AECCG Gabon, 1991). Approximately 85 percent of Gabon's 267,000 square kilometers (103,000 square miles) is covered in tropical forests. Lahm and Barnes (1991) state that elephants are found in large forested blocks unpopulated by humans in the center of the country. The vast forests are largely uninhabited by man because the sparse human population is concentrated along the main roads. The forests have a potential to support a very large elephant population. Deforestation rates are very low (<0.1 percent per annum) and Gabon is expected to lose a smaller portion of its forested area than will any other

African country within the next 50 years.

The construction of the trans-Gabon railway has opened up virgin forests for logging, and planned or actual mineral and oil exploitation activities have introduced roads and human disturbances into areas that were formerly isolated and uninhabited. Slash and burn agricultural practices minimally impact protected areas and overall habitat. Rural human population densities are low so community oriented elephant management programs have been slow to evolve.

Zaire formerly was the most important habitat of the African elephant on the continent. Even today this country may provide 600,000 square kilometers (231,000 square miles) of habitat for the savanna elephant and 886,000 square kilometers (334,000 square miles) of habitat for the forest elephant (GRID 1991). The AECCG Review (1991) lists 25,000 elephants occurring in savanna habitats and 65,000 elephants living in forest habitats. That plan also states that these population figures may grossly underestimate the elephant population of Zaire because the elephants in the forest habitats have been little studied. On the other hand, Douglas-Hamilton *et al.* (1992) quote studies that suggest Zaire's total elephant population may only be 83,000. Barnes (1991a) states that the greatest threats to the extensive habitats of Zaire are forest fragmentation and deforestation caused by logging activities.

Southern Africa

Eight southern African countries provide 1,300,000 square kilometers (502,000 square miles) of elephant range and support between 169,000 and 245,000 (Douglas-Hamilton *et al.*, 1992).

Angola is one of the largest countries in sub-Saharan Africa and is presently in a transition mode from civil war to democratic government (AECCG Angola, 1991). Wildlife habitats are varied, ranging from lowland rainforests, deserts, and miombo woodlands phasing into forest-savanna in the north and mopane woodlands in the south. Angola possesses great biotic diversity and is in the paradoxical situation of possessing one of the richest and most varied, yet least well known wildlife resources in Africa. Angola is the only elephant range in Africa to include desert and rainforest biomes and the savanna, forest and rare desert-dwelling elephant. Information about elephants in Angola is indirect, crude and unreliable. This is reflected in estimates of elephant range as between 200,000-400,000 square kilometers and of

the elephant population as being between 10,000 and 50,000. Habitat loss or conflicts over land-use are not expected to be near-future threats to Angola's elephants.

The major elephant range in Botswana encompasses an area of 80,000 square kilometers (30,800 square miles) north of latitude 20 degrees (Department of Wildlife and National Parks, Botswana, 1991). This area contains an elephant population estimated at 54,600 (46,000-63,000) which is about 99 percent of the country's total African elephant population. Seventy-five percent of the population withdraws into about 16 percent of this northern range during the dry season. These dry season core areas contain riverine habitats which are the rarest and most diverse habitats in the country. These elephant concentrations may produce sufficient foraging pressures to cause significant habitat damage. Botswana believes it is necessary to pursue the active management of elephants so that important habitats will not be destroyed.

Botswana's elephant management policy is to maintain elephants at their 1990 population level (about 55,000), maintain the quality of elephant habitat at an acceptable state, preserve biodiversity within major habitats and to reduce conflicts between elephants and humans. Botswana may develop watering points to try and lure elephants from riverine habitats and to reduce habitat degradation.

Malawi's elephant range is about 9,000 square kilometers (3,400 square miles) which is restricted to protected areas in national parks, game reserves and forest reserves (AECCG Malawi, 1991). Malawi has a rapidly increasing human population, a shortage of agricultural land and one of the highest human population densities in Africa. There is a growing conflict in Malawi over land-use, the major problem facing protected area management and elephant conservation. A sustainable population of perhaps 2,500 elephants could be maintained within the established protected areas if effective fencing was installed to separate elephant habitats and agricultural activities.

The total elephant population in Mozambique was estimated at perhaps 13,350 animals in 1990 (AECCG Mozambique, 1991). Potential elephant range is extensive and habitat is contiguous in large areas of Mozambique. All protected areas, however, have been severely impacted by the continuing civil conflict which has now lasted for 26 years.

Negotiations are ongoing with South Africa to establish a large common national park that will include Kruger and a comparable area in the Limpopo Valley in Mozambique.

Elephants were formerly distributed throughout much of Namibia but agricultural settlements and unrestricted hunting in the late 19th century and agricultural developments in the early and mid-20th century forced elephant populations into their present distribution. The elephant populations and their distribution patterns have been largely unchanged in the last two decades (AECCG Namibia, 1991). More elephants occur outside protected areas than within and elephants generally move freely in and out of parks and reserves. The future of elephants outside parks and reserves and the key to enlarging protected areas lies in allowing local communities to utilize elephants or share in revenues from the harvest of elephants. The Ministry of Wildlife, Conservation and Tourism is striving to initiate a community outreach program to promote programs of sustainable utilization of wildlife. Habitats available to elephants can be substantially increased in the future by introducing elephants into suitable protected areas outside the present elephant range, by establishing additional areas of protection, and by allowing the introduction of elephants into privately owned nature reserves and game farms.

The Caprivi strip and northern and northeastern Namibia share borders and elephant populations with Angola, Zambia, and Botswana. Some elephant passage corridors in the Caprivi are protected and Namibia has already established regional coordination efforts with Botswana. The continued existence of the northeastern portion of Namibia's elephant population may well depend on the success of game management programs in neighboring countries.

Seventy-five percent of the elephant range and 85 percent of the elephants in South Africa are within Kruger National Park (National Parks Board of South Africa, 1991a). Other elephant ranges are composed of state and private lands located both near Kruger and in small scattered blocks elsewhere in South Africa. Range available to elephants has increased by about 3,900 square kilometers (1,500 square miles) since 1979.

Management for elephants in Kruger National Park has provided a water stabilization program by building dams on watercourses and providing wind driven water pumping devices. Facilities are in place to control wildfires and to

allow for controlled burning of vegetation. Kruger has an elephant proof fence along the boundary with Mozambique and a variety of cross fences and boundary fences to control movements and foraging pressures.

Zambia provides about 211,000 square kilometers (81,400 square miles) of elephant habitat and possess a population of 32,000 elephants (GRID 1991). The AECCG Zambia (1992) estimates the African elephant population to be less than 25,000 with 50 percent occurring within the National Parks in the Luangwa Valley. Most human-elephant conflicts center around agricultural areas, although mining also impacts elephant habitat. Recent efforts have indicated that wildlife management and the acceptance of wildlife as a legitimate land use are enhanced when local residents share in management responsibilities (Lewis *et al.*, 1990).

Zimbabwe provides 113,000 square kilometers (43,500 square miles) of elephant habitat and has an elephant population estimated at 51,700 (GRID 1991). The Zimbabwe Department of National Parks and Wild Life Management believes the present elephant population may be about 70,000 and has stated that their elephant management goal is about 43,000 animals (Nduku 1991). Douglas-Hamilton *et al.* (1992) list an elephant population of 49,700–68,400. Over 12 percent of Zimbabwe's surface area is dedicated to national parks, safari areas, sanctuaries, recreational parks, botanic reserves and botanic gardens. The management objectives in these lands are to: Manage wildlife species including elephants; preserve representative examples of Zimbabwe's aquatic and terrestrial flora and fauna and their physical environments; protect areas of scenic beauty and special interest; preserve rare, endangered and endemic species; conserve water catchments; and to provide opportunities for public education and the advancement of scientific knowledge. All significant physical developments in these areas require an environmental impact assessment, and careful environmental planning is undertaken to minimize environmental impacts when development is inevitable (Zimbabwe Department of National Parks and Wild Life Management, 1991).

An additional 20 percent of the surface area of Zimbabwe has become dedicated to wildlife management since 1980 because of the Communal Areas Management Programme for Indigenous Resources (CAMPFIRE). This program is an important new-political-economic-

sociological institution that has developed an environmental ethic, restored the perception of wildlife as a valuable resource, advocated wildlife management as an adjunct to subsistence agriculture, and encouraged the conservation of natural ecosystems and wildlife habitats on tribal trust lands (Anon, 1990).

West Africa

An estimated 10,000–16,000 African elephants presently dwell in a series of highly fragmented habitats that are estimated to total about 229,000 square kilometers (88,400 square miles) throughout western Africa (Douglas-Hamilton *et al.*, 1992). Increasing human population pressures and declining natural productivity (two decades of drought) in dry savanna habitats have confined remaining elephant populations to isolated pockets of habitat largely in parks and other reserves (Cumming *et al.*, 1990). Douglas-Hamilton (1987) indicated that most elephants were eradicated from west Africa in the early twentieth century. The 1978 Federal Register notice (43 FR 20503) listing the continental African elephant population as threatened indicated that the elephant in west Africa occurred in remote border areas or in small isolated patches of suitable habitat. That is essentially the present condition.

Agricultural development and logging are serious agents of habitat destruction in Sierra Leone (AECCG Sierra Leone, 1991), Togo (AECCG Review, 1991), Liberia (AECCG Liberia, 1991), Guinea (AECCG Review, 1991), Ghana (AECCG Ghana, 1991), and the Ivory Coast (AECCG Review, 1991). The AECCG Review (1991) cites desertification as an important agent of habitat destruction in Burkina Faso, Mali and Niger. Drought and bush burning have adversely impacted habitats in northern Nigeria and deforestation and mineral exploitation have adversely impacted habitats in southern Nigeria (AECCG Review, 1991). That publication also states that habitat destruction is not considered the major limiting factor in Benin, Guinea Bissau and Senegal at this time. The small regional population of African elephants has apparently remained stable throughout most of this century and is not expected to increase in the foreseeable future. Habitat destruction and modification provide a greater threat to elephants in west Africa than to any other portion of the continental African elephant population.

B. Overutilization for Commercial, Recreational, Scientific or Educational Purposes

The present estimate of the continental African elephant population is 549,000–652,000. The methods for estimating these elephant numbers are described in detail in GRID (1991) and by Douglas-Hamilton *et al.* (1992), and those authors have carefully expressed the reservations associated with different data sources. Some critics have suggested that the estimates of the continental elephant population are too high. Douglas-Hamilton *et al.* (1992) state that there are no better estimates of elephant populations that are based on field measurements than those recorded in the African Elephant Database. They indicate (Douglas-Hamilton *et al.*, 1992:7) that the lower estimates proposed by their critics seem to be pure guess-work. Douglas-Hamilton *et al.* (1992) acknowledge the problems associated with building the African Elephant Database. The vastness of the elephant range and the difficulty of assessing numbers in forest habitats and in range states with political unrest have made data collection arduous and expensive and have limited the quantity of high quality data available for analysis. The latest edition of the African Elephant Database (Douglas-Hamilton *et al.*, 1992) lists only 54 percent of the elephant numerical data entries as being of quality "1" or "2" (best or medium quality).

Elephant populations seem to have fluctuated wildly through time because man has periodically been a persistent and proficient predator. Ansell (1971) stated that the elephant was exterminated from north of the Sahara by the sixth century AD and Douglas-Hamilton (1987) stated that most elephants were eradicated from west Africa by 1914.

Populations in west Africa were reduced to fragments of their former size and range and they have remained stable since that time (Cumming *et al.*, 1990). An historical account of elephant numbers in South Africa (National Parks Board of South Africa, 1991a) indicates that elephants occupied much of present day South Africa, especially in the high rainfall areas, in the mid-seventeenth century. A hundred thousand elephants may have existed in the country in 1650. The decline in the elephant population between 1650 and 1790 is believed due to human settlement and population growth. Later declines from 1790 to 1870 were due to a massive elephant kill for the ivory trade, and from 1870–1920

were caused because occasional elephants were killed because of crop depredation. Possibly only 100 elephants remained in 1920 when protective and management policies were established and enforced. Elephant populations in South Africa have since recovered to the presently managed population of about 8,000 animals. Similar trends in elephant populations have occurred in other areas of Africa as well.

Cumming *et al.* (1990) indicate that the combination of legislation, a fall in the price of ivory, and a drop in the demand for ivory associated with World War I allowed elephant populations to recover. Elephant populations had substantially recovered, by mid-century, in eastern, central and southern Africa so that some culling had to be undertaken to prevent habitat damage and human-elephant conflicts. The ivory trade increased substantially in the early 1970s as demand and supply pressures soared so that ivory exports from Africa reached pre-1914 levels. Douglas-Hamilton (1988) stated that the wave of elephant killing for ivory in the 1970s and 1980s was the second of its kind in recorded history. The first essentially wiped out elephants in much of east Africa by the end of the nineteenth century. Douglas-Hamilton (1988) stressed that in 1990, when it was feared that the elephant would become extinct, game laws were enforced and populations began to increase.

There were several conservation efforts implemented in the 1970s when it was realized that the illegal killing of elephants was widespread and that many elephant populations, especially in east Africa, were in decline. The elephant was put on appendix II of CITES in 1977 and was classified as threatened by the Service in 1978 which at that time issued regulations that allowed the importation of ivory into the United States in accordance with the CITES ivory control system (43 FR 20499-20504). The elephant was also listed as vulnerable by the International Union for Conservation of Nature and Natural Resources (IUCN) in 1978. There conservation efforts were deemed as failures in the late 1980s when the illegal killing of elephants for ivory commerce was considered out-of-control. Many elephant populations were believed to be in substantial decline and alternative conservation measures were necessary when the petition to reclassify the African elephant as endangered was filed in February 1989. The petitioners identified the ivory trade as the single most important factor threatening the elephant. This was supported by Douglas-Hamilton (1988) who stated

that even a very cautious scientist would (at that time) recognize that the elephant would become an endangered species if the offtake of ivory continued at the rate observed from the 1970s through his reporting period. His assessment was based on: (1) Population trends from throughout the continent (except in parts of southern and western Africa) that showed declines in elephant numbers coupled with high carcass counts; (2) ivory export curves that collapsed after the mid-eighties because elephants were becoming scarce which suggested overutilization; and (3) a diminished average tusk weight that also suggested overutilization. It seemed likely that one-half the elephant population, perhaps 700,000 animals, was lost in the decade 1979-1988.

Several conservation efforts to curtail the illegal killing of elephants were initiated in 1989. Individual range countries increased their efforts to protect elephants and the international community began to contribute substantially to anti-poaching campaigns. Tanzania organized Operation Uhai in 1989 to deal forcefully with elephant poaching activities and Kenya substantially reorganized its conservation agency into a more effective Kenya Wildlife Service in 1990. The United States, on June 9, 1989, established a moratorium on the importation of raw and worked African elephant ivory from all ivory producing and intermediary nations (54 FR 24758-24761). The action was taken under authority of sections 2202(a) and 2202(b) of the African Elephant Conservation Act. A number of other major ivory consuming nations, most notably those in western Europe and Japan, enacted similar legislation.

The African elephant was transferred from appendix II to appendix I at the seventh meeting of the Conference of Parties to CITES (October 1989). This occurred after a provision was approved that provided for a panel of experts to convene after a proposal had been received to transfer any elephant population back to appendix II. The panel of experts would recommend to the Parties whether specific biological and trade criteria were met for any populations later nominated for downlisting to appendix II. The change in status for the African elephant became enforceable on January 18, 1990 (55 FR 5847-5851, February 20, 1990; corrected March 5, 1990, 55 FR 7714-7716). The appendix I listing was continued by the Conference of the Parties to CITES that convened in Kyoto, Japan, in March 1992.

The Service based its proposed rule on the best information then available. Few data were available to judge whether the conservation actions undertaken in 1989-90 were effective. The 12-month finding (February 16, 1990) was made eight months after the United States ivory importation moratorium was imposed and one month after the elevation of the elephant to appendix I became enforceable. The proposed rule indicated that levels of protection and quality of management varied widely among individual range states and that most range state populations seemed best classified as endangered because they might still be subject to overutilization. New information available since publication of the proposed rule indicates that most populations of the African elephant presently are not being overutilized.

The following review is chronological and describes an increasing tendency toward control of the illegal killing of elephants throughout Africa. Many populations of the elephant are currently stabilized or perhaps are increasing. The steep rate of decline observed from the 1970s up to the mid-or late-1980s has been halted for most populations.

The several conservation activities that were implemented just before and just after the February 1989 petition was filed seem to be working as intended. The United States Government queried 33 American embassies in African range states in April 1990 to determine, among other things, if elephant poaching had slowed, increased or remained unchanged since the implementation of the CITES ban in January 1990. Embassy officials in May-July 1990, reported that elephant poaching was undiminished in Cameroon, Niger, Sudan and Zaire, while officials in Burundi, Ethiopia, Kenya and Zambia believe that poaching was diminished since the appendix I classification. Poaching may have increased but was still low in Botswana, and was low and remained so in Burkina Faso, Gabon, Liberia, Mali, Togo, Uganda and Zimbabwe. Poaching still occurred, but was likely more for meat than ivory, in Benin, Equatorial Guinea, Ghana, Cote d'Ivoire and Nigeria. No pertinent responses were received from other embassies.

O'Connell and Sutton (1990) state that although some illegal killing continued, elephant poaching seemed to be decreasing in many African countries because of a lack of financial incentives and an increased vigor and effectiveness of government anti-poaching activities. They further state that if these trends hold, depleted

populations can reasonably be expected to begin recovery.

Dougherty (1991) evaluated the status of elephant conservation in 10 African range states. Elephant poaching was never intense in Burkina Faso except near the borders with Ghana and the Ivory Coast where poaching may frequently be for meat. There is a prohibition against ivory commerce because elephant populations are fragmented and could be subject to extinction even under low poaching intensities. There are no reports of poaching where law enforcement is good but poaching may occur where protection is poor.

Elephant conservation in Cameroon varies by province. Overall, there was a significant decline in poaching in 1990. This trend is believed due to the reduced price for ivory. Elephants are still poached for ivory in extreme northern Cameroon but anti-poaching efforts may keep illegal killing below recruitment levels. The elephant is not in trouble where anti-poaching efforts are substantial.

There is no way to quantify and statistically compare poaching level before and after the ban in the Central African Republic (CAR). Improved conservation may be expected to occur in southwest CAR because of the strengthening of protection capabilities, new conservation initiatives stressing the sustained use of wildlife, and the ivory trade ban. The elephant appears safe where anti-poaching protection is good. Elephants in forest habitats may have fared better than those in savanna habitats although some poaching of elephants especially for meat still occurs within forest habitats. Large-scale conservation efforts, rural development and monitoring programs occur in northern CAR where poaching is presently under control.

The number of elephants in Ghana diminished in the past because of ivory poaching. Elephants in southwestern forests continue to be poached. The level of poaching within protected populations has dropped since 1988 and these elephant populations are currently slowly expanding.

Kenya's capability to conserve elephants is among the best in Africa. There is a general political stability which provides a good environment for the uninterrupted support of conservation, and wildlife and protected areas are perceived as important to the country's economy and balance of trade. The appendix I listing is believed responsible for the reduction in poaching, and elephants seem well protected from poaching at this time.

An ivory trade may still exist in Nigeria and poaching may still impact some populations especially those near the border with Chad.

Elephant poaching for ivory is now at insignificant levels throughout Tanzania. Operation Uhai was initiated in 1989 and was very effective. Present anti-poaching efforts also seem to be effective.

Poaching has been curtailed under the present government in Uganda and elephant numbers are slowly recovering.

Poaching has not stopped in Zaire but is possibly slowed.

More recently, Dublin and Jachmann (1992) evaluated the impact of the ivory ban on elephant poaching in six target states. Zambia experienced an overall decline in poaching in 1990-1991 compared to levels observed from 1987-1989. Although poaching rates were at the same rate or higher in some areas there have been significant reductions in poaching in the more important populations. These dramatic drops were due to increased law enforcement actions funded by external donors before the ban was established.

Dublin and Jachmann (1992) agreed with Dougherty (1991) that poaching in Tanzania was diminished because of Operation Uhai and because of an increased law-enforcement capability.

Illegal hunting decreased in three of seven, but increased in four of seven, conservation areas in Malawi. One significant cause of increased poaching may be the one million Mozambican displaced persons now living in southern Malawi. Illegal killing and culling of elephants for crop damage are harvesting some populations at unsustainable rates.

There has been a minor effect of the ban on the illegal killing of elephants in Cameroon. The illegal killing of elephants continues in the northern savanna zone because an ivory market remains in Nigeria. A domestic but limited ivory market may also exist in Cameroon. Poaching rates are somewhat reduced in the forest zone where most elephants occur in Cameroon.

The illegal hunting of elephants in savanna habitats in the Ivory Coast continues at the same low levels as during the pre-ban era. Poaching in that country's forest zone is probably reduced because of increased law enforcement efforts.

Elephant populations in Zaire have declined by about 75 percent since 1981 and the ivory harvested from that country was sufficient to supply 30-40 percent of the ivory on the world market during the decade of the 1980s. Elephant poaching is still a major problem in the unprotected savanna zones of Zaire.

Elephant poaching was reduced to low levels in protected savanna areas by the mid-1980s. The poaching situation has improved substantially in some forest zones in the last two years. The infusion of substantial funds from external sources in the mid-1980s has resulted in a rapid but localized reduction in illegal activity. The present illegal hunting of elephants seems lower in the rainforest zone than in unprotected savanna areas.

A major co-signatory to the February 16, 1989, petition (Humane Society of the United States, 1992) provided comments on January 30, 1992, on proposals by several southern African range states to transfer their populations of the African elephant from CITES appendix I to II.

The Humane Society quoted sources that indicated that the poaching of elephants had been greatly reduced in Kenya, Tanzania, Chad, Gabon, Burkina Faso, Zaire and the Congo. They especially emphasized the very substantial reductions in illegal killing in Kenya and Tanzania. The Environmental Investigation Agency (1992) also reported that elephant poaching has steeply fallen in east and central Africa and that elephants have started to re-colonize their former ranges.

Douglas-Hamilton *et al.* (1992) indicated that Gabon has retained relatively undisturbed populations of forest elephants because organized poaching has never become a way of life in that sparsely populated country. They also state that recent censuses in Kenya, Uganda and Tanzania show an arrest in rates of population decline. Sightings of carcasses declined in Tsavo National Park which contains one-third of Kenya's elephants. Similarly, poaching levels are reported to have decreased since 1989 in Tanzania. The positive change in population trends is attributed to massive investments in security as well as a reduction in the demand for ivory following the appendix I listing. Elephant populations in west Africa could still be declining because of the encroachment into elephant habitat because of human population increases and the hunting of elephants for bush meat. Poaching for ivory has been a problem in the past but this stimulus to poaching seems reduced compared to years prior to 1989. Elephant populations in South Africa, Namibia, Botswana and Zimbabwe were believed to have been increasing even during the decade of the 1980s.

The CITES Panel of Experts on the African Elephant (1991, 1992) evaluated several southern African elephant populations. The African elephant populations in Botswana, South Africa,

and Zimbabwe were found to be viable, and potential risks or threats to those populations were found to be negligible. Malawi's elephant populations were found to be viable only in the short or medium term, and Namibia's elephant population was found to be subject to fluctuations as a result of natural mortality due to periodic drought and disease. The Panel found that Zambia's national elephant population had declined dramatically but three potentially viable sub-populations remained. The greater Luangwa Valley population numbering some 10,000 elephants shows no evidence of significant poaching over the past three years and its prospects are good if poaching remains contained. The other two sub-populations still have significant numbers of elephants but have experienced heavy poaching.

There is also a question of scale when evaluating Factor B. The fact that some legal and illegal killing of elephants continues to exist does not constitute overutilization of the species if total mortality does not exceed recruitment. Man has historically been the chief predator of elephants. Barnes (1991b) has pointed out that many rural Africans, especially in central Africa, are hunters and not pastoralists. Hunting is a cultural heritage of many native Africans. Opportunistic hunting often to provide meat or to protect agricultural crops can impact fragmented or local elephant populations but does not endanger the continental elephant population.

The Service finds that the present rate of utilization, because the several conservation measures instituted in 1989 and thereafter appear to be effective, does not endanger the continental population of the African elephant at the present time. This evaluation could change if a large scale illegal killing of elephants to satisfy an unregulated ivory trade once again occurred.

C. Disease or Predation

Some reports exist of lion predation on very young calves and of anthrax as an agent controlling some specific elephant populations, perhaps most notably the elephant population in Etosha National Park, Namibia. Namibia's elephant population may be considered to be subject to fluctuations as a result of natural mortality due to periodic drought and disease (CITES Panel of Experts on the African Elephant, 1992). Disease or predation, however, are not factors that threaten the continental population of the African elephant.

D. The Inadequacy of Existing Regulatory Mechanisms.

Information available to the Service at the time of the 12-month finding and of the publication of the proposed rule indicated that the management infrastructure in most range countries was inadequate to control the overutilization of the elephant. New information since the publication of the proposed rule indicates the increased effectiveness of enhanced anti-poaching activities and the effectiveness of the various ivory importation moratoria and of the CITES appendix I ban in dampening the international demand for elephant ivory. The African elephant is not being overutilized at the present time because of the adequacy of these international, continental, regional, and state regulatory mechanisms.

Most range countries have now developed elephant conservation plans. Five range countries (South Africa, Namibia, Zimbabwe, Botswana and Tanzania) have individually described a specific long-term population goal for elephants and determined planned actions to achieve those goals. The five countries are each members of CITES and believe they can eventually support a population that could total about 191,000 elephants without destroying agricultural based economies, habitat quality, or threatening human populations. These five countries already have substantial investments in wildlife management but will continue to need external aid to purchase additional elephant habitat; provide, improve and maintain anti-poaching equipment; improve salaries for wildlife personnel; and to generally improve the infrastructure associated with elephant management. These countries possess some of the greatest opportunities for consumptive and non-consumptive tourism in Africa.

The potential maximum elephant population in South Africa is about 13,000 if funds become available for purchasing additional habitats and improving present habitats (National Parks Board of South Africa, 1991b). Namibia has established a provisional elephant goal of 10,000 animals which will require the establishment of additional protected areas, the establishment of sustainable wildlife management programs with native persons, and perhaps the introduction of elephants into suitable habitats outside the present elephant range. Several thousands of the 10,000 animals could be seasonal visitors only, as is true for the present elephant herd in Namibia (AECCG Namibia, 1991). Zimbabwe could support 43,000 elephants and

sustain a desired degree of woodland cover (Nduku 1991). Botswana's elephant management objectives include maintaining elephant populations at their 1990 levels which total about 55,000 animals (Department of Wildlife and National Parks, Botswana, 1991). Zimbabwe and Botswana could presently have elephant populations in excess of their respective management goals. Tanzania's elephant management goal is about 70,000 animals (May 1992).

A sixth country, Kenya, also has extensive regulatory mechanisms in place. Kenya is unwilling to commit to a numerical elephant management goal but seems to want to attain and maintain elephant numbers that are about double the present elephant population. Conflicts between people and elephants already exist in some areas of the country because of a rapidly growing human population (Poole, 1992). Kenya plans to maintain elephants at present levels where people and elephants coexist and to allow elephants to increase in numbers, especially in those protected areas where poaching severely reduced elephant numbers in the 1970s and 1980s.

Perhaps the most significant difference in an elephant management program in these six African range states and a big game management program in North America is that African elephant management programs are usually significantly underfunded. Otherwise the quality of management and science seems comparable.

The remaining range states may presently support about 400,000 elephants (Douglas-Hamilton *et al.*, 1992). Most of these states have established game departments, are developing an environmental ethic, and intend to develop wildlife conservation as a legitimate land use. Their management infrastructure suffers because of inadequate funding. Indeed, the under-funding of Africa's wildlife departments is the most pervasive and fundamental problem facing the elephant at the present time (AECCG Review, 1991).

Elephant management in most states in 1992 is equal or superior to that which existed in 1978 when the elephant was classified as threatened. The knowledge base about elephants and techniques for censuring and protecting elephants are superior to 1978 conditions. The recently developed conservation plans have helped range states develop their elephant management programs and to compete for funding from external donors. A fundamental priority within the elephant conservation plans is for

range states to increase their operating capability and their professional proficiency.

All legal international trade in elephant products virtually ceased as of January 1990. The global demand and the price of ivory has virtually collapsed (AECCG Review, 1991). Many range states outside of southern Africa favored retention of the elephant on CITES Appendix I because that action would lead to a diminished international demand for ivory and to reduced poaching pressures on elephants within their countries. More effective law enforcement has also had a great influence on the suppression of poaching (Dublin and Jachmann 1992). Financial support for wildlife departments to increase protective actions is considered an action that can go an enormous way towards curing Africa's wildlife conservation crisis, at least in the short and medium terms (AECCG Review, 1991).

Wildlife departments in several range states realize the need to further codify the traditional rights of rural people to make use of wildlife and to profit from its presence. A basic common deficiency in the enforcement of present status has been weak support from the judiciary and a lack of support from customs officials and the police (AECCG Review, 1991).

The short term aims in the elephant conservation plans are to protect elephants from illegal killing, to improve the management of protected areas and to strengthen the management capability of wildlife departments. The AECCG Review (1991) suggests these are feasible when political stability exists and if sufficient financial support arises. The long term goals are to balance wildlife and human needs. This requires that sufficient returns be realized from the sustainable utilization of wildlife so that wildlife conservation is easily perceived as an important land use. The CAMPFIRE program in Zimbabwe is an excellent example of a social program built on values obtained from the sustainable utilization of wildlife resources.

E. Other Natural or Manmade Factors Affecting its Continued Existence.

The African elephant, like many terrestrial species, is adversely impacted by natural factors such as desertification and periodic drought. Desertification associated with the southward extension of the Sahara and periodic drought like that presently impacting many habitats in southern Africa may cause elephant mortality, limit recruitment, cause local or regional range contraction, and may increase

competition among other wildlife species and man for dwindling resources. Civil unrest in several range states also adversely affects elephant populations. Both political unrest and environmental stresses may impact local or regional elephant populations but neither threatens the continental elephant population at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages conservation measures by Federal, international, and private agencies, groups, and individuals.

Section 7(a) of the Act, as amended, and as implemented by regulations at 50 CFR part 402, requires Federal agencies to evaluate their actions conducted within the United States or on the high seas, with respect to any species that is proposed or listed as endangered or threatened and with respect to its proposed or designated critical habitat (if any). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat.

If a proposed Federal action may affect a listed species, the responsible Federal agency must enter into formal consultation with the Service. Because the African elephant is presently listed as threatened, it is already fully covered by section 7(a), and no new requirements are added by the present listing action.

Section 8(a) of the Act authorizes the provision of limited financial assistance for the development and management of programs that the Secretary of the Interior determines to be necessary or useful for the conservation of endangered species in foreign countries. Sections 8(b) and 8(c) of the Act authorize the Secretary to encourage conservation programs for foreign endangered species, and to provide assistance for such programs, in the form of personnel, and assistance for research, conservation, management, or protection of the species.

These actions are also conducted under the authorization of section 2101 of the African Elephant Conservation Act (AECA) that provides, through the African Elephant Conservation Fund, a means to provide financial assistance for elephant conservation to African

government agencies responsible for African elephant conservation and protection. This fund provides significant financial assistance to range states to develop scientific information for habitat conditions and elephant numbers and trends, to control the take of African elephants, and to implement conservation programs to provide for healthy and sustainable populations of African elephants.

Permits may be issued to carry out otherwise prohibited activities involving threatened species, including individuals, their parts and products thereof, under certain circumstances. Regulations governing permits for threatened species on CITES Appendices are listed in 50 CFR parts 13, 17, and 23, and must be met before the permit can be issued.

Revision of the Special Rule

The final revised special rule provides for basically the same prohibitions and exceptions as did the proposed revised special rule (56 FR 11399-11401). The current special rule (50 CFR 17.40(e)) provides exceptions which allowed for the import and export of raw and worked ivory and other parts from threatened populations for commercial and other purposes under certain conditions. These exceptions were superseded by the June 9, 1989 ivory moratorium (54 FR 23758) imposed under the AECA and the January 18, 1990 transfer of the African elephant to CITES appendix I. Neither the proposed revised special rule nor the final revised special rule have provided general exceptions to the prohibition against the import of raw and worked ivory into the United States. The Service believes the general prohibitions against the ivory trade can help reduce any future overutilization of the African elephant resource. The final revised special rule does contain limited exceptions that allow the import of ivory that is either bona fide antique, or that has first been registered with the U.S. Fish and Wildlife Service, legally exported, and is being legally reimported. No exception is granted to the prohibition against the export from the United States of any African elephant raw ivory for commercial purposes. The exception granted for the export of worked ivory requires that permit criteria in 50 CFR parts 13 and 23 be met.

The AECA specifically allows individuals to import sport-hunted elephant trophies that have been legally taken in an ivory producing country that has submitted an ivory quota, even if a moratorium on ivory imports from that country has been established under the

AECA. The Service notes that both this form of consumptive utilization, as well as forms of non-consumption utilization, as well as forms on non-consumptive utilization, provide important revenues for elephant conservation to range states. The proposed revised special rule allowed the import of sport-hunted elephant trophies from threatened populations if general Act permit procedures and CITES requirements were met. CITES requirements included a determination that the killing of elephants for sport-hunting enhances the survival of the species by providing financial support programs for elephant conservation. This requirement is retained in the final revised special rule for the import of sport-hunted trophies from threatened populations that are on CITES appendix I. A CITES appendix I import permit is required and can only be issued after the Service has determined that the import is non-detrimental to the species and that the killing of the animal whose trophy is intended for import would enhance the survival of the species. A separate permit under the Act is not required. No specific criteria for satisfying the CITES I import requirements are listed in the final revised special rule and the criteria listed in the proposed revised special rule have been deleted. The final revised special rule contains an exception to the import prohibition which allows the import of sport-hunted trophies when the following conditions have been met: (1) The trophy was taken in a country that has established a sport-hunting quota for the year of export; (2) a CITES appendix I import permit has been provided after all necessary requirements have been fulfilled; and (3) the trophy has been legibly marked. The sale or offer for sale of such trophies is prohibited by permit conditions.

The proposed revised special rule included an exemption from general prohibitions in the Act regarding interstate transactions in non-antique ivory from endangered populations. This was included because of the split-listing status that was proposed for the African elephant. The Service has no evidence that the continued interstate commerce within the United States in legally imported African elephant ivory contributes in any way to illegal killing and the overutilization of the African elephant resource. Consequently, the Service, in the final revised special rule, includes an exemption from the general prohibitions to allow the possession and interstate commerce of legally imported African elephants and their products and parts. This remains unchanged from the existing special rule, and includes

not only ivory but also live animals and all African elephant parts and products that were legally imported.

National Environmental Policy Act

The Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act, as amended. A notice outlining the Service's reasons for this determination was published in the *Federal Register* of October 25, 1983 (48 FR 492440).

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Author

The primary author of this final rule is Dr. Henry L. Short, Office of Scientific Authority, U.S. Fish and Wildlife Service, Washington, DC 20240 (703-358-1708).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is hereby amended as set forth below:

1. The Authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.

2. Section 17.40 is amended by revising paragraph (e) to read as follows:

§ 17.40 Special rules—mammals.

(e) African elephant (*Loxodonta africana*)—(1) *Definitions*. For the purposes of this paragraph (e):

(i) *African elephant* shall mean any member of the species *Loxodonta africana*, whether live or dead, and any part or product thereof.

(ii) *Raw ivory* means any African elephant tusk, and any piece thereof, the surface of which, polished or unpolished, is unaltered or minimally carved.

(iii) *Worked ivory* means any African elephant tusk, and any piece thereof, which is not raw ivory.

(iv) *Lip mark area* means that area of a whole African elephant tusk where the tusk emerges from the skull and which is usually denoted by a prominent ring of staining on the tusk in its natural state.

(2) *Prohibitions*. Except as provided in the exceptions in paragraph (e)(3) of this section, it shall be unlawful for any person to:

(i) Import or export any African elephant,

(ii) Possess, sell or offer for sale, receive, deliver, transport ship, or export

any African elephant which was illegally imported into the United States,

(iii) Sell or offer for sale any sport-hunted trophy imported into the United States in violation of permit conditions.

(3) *Exceptions*. (i) African elephants, other than sport-hunted trophies and raw and worked ivory, may be imported or exported provided all permit requirements of 50 CFR parts 13 and 23 have been complied with.

(ii) *Ivory*. (A) Raw or worked ivory (other than sport-hunted trophies) may be imported only if:

(1) it is a bona fide antique of greater than 100 years of age on the day of import, or

(2) It was exported from the United States after being registered with the U.S. Fish and Wildlife Service.

(B) Worked ivory may be exported in accordance with the permit requirements of 50 CFR parts 13 and 23.

(C) Raw ivory may not be exported from the United States for commercial purposes under any circumstances.

(iii) Sport-hunted trophies may be imported into the United States provided:

(A) The trophy originates in a country for which the Service has received notice of that country's African elephant ivory quota for the year of export;

(B) All of the permit requirements of 50 CFR parts 13 and 23 have been complied with;

(C) A determination is made that the killing of the animal whose trophy is intended for import would enhance survival of the species; and

(D) The trophy is legibly marked by means of punch-dies, under a marking and registration system established by the country of origin, that includes the following information: Country of origin represented by the two-letter code established by the International Organization for Standardization (see appendix A to chapter I) followed by the registration number assigned to the last two digits of the year of registration and the weight of raw ivory to the nearest kilogram. Any mark must be placed on the lip mark area and indicated by a flash of color which serves as a background for such mark.

Dated: July 10, 1992.

John Turner,
Director.

[FR Doc. 92-18861 Filed 8-7-92; 8:45 am]
BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 672 and 675

[Docket No. 920402-2102]

Groundfish of the Gulf of Alaska;
Groundfish of the Bering Sea and
Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Withdrawal of rule and issuance of new final rule.

SUMMARY: NMFS withdraws the rule published at 57 FR 33902 on July 31, 1992, and issues a new final rule prohibiting federally permitted U.S. vessels from fishing in the Central Bering Sea in an area called the "Donut Hole," and from possessing on board fish harvested from the Donut Hole as long as that vessel is in the exclusive economic zone (EEZ) of the Bering Sea and Aleutian Islands (BSAI) and the Gulf of Alaska (GOA). This rulemaking is necessary to reduce the further exploitation of the Aleutian Basin pollock stock (*Theragra chalcogramma*), which is found in both the Donut Hole and in the EEZ. The rulemaking will:

(1) Promote the goals and objectives of the North Pacific Fishery Management Council (Council) regarding the management of pollock stocks off Alaska, and (2) Further U.S. efforts regarding the negotiations with Japan, Poland, China, Korea, and the Russian Federation to establish an international conservation regime on the living resources of the Central Bering Sea.

EFFECTIVE DATES: The withdrawal of the rule published on July 31, 1992, beginning at 57 FR 33902 is effective August 10, 1992. The amendments made by this final rule are effective August 24, 1992.

FOR FURTHER INFORMATION CONTACT: Steven Pennoyer, Regional Director, National Marine Fisheries Service, Alaska Region, P.O. Box 21668, Juneau, AK, 99802, telephone 907-586-7221.

SUPPLEMENTARY INFORMATION: On July 31, 1992, NMFS issued a rule at 57 FR 33902 to amend parts 672 and 675. That rule was to become effective on August 14, 1992. The rule as published at 57 FR 33902 was incorrect. It is therefore withdrawn and replaced by the issuance of a new rule.

The domestic and foreign groundfish fisheries in the EEZ of the GOA and the BSAI are managed by the Secretary of Commerce (Secretary) according to the

Fishery Management Plans (FMPs) for Groundfish of the GOA and the BSAI. These FMPs were prepared by the Council under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act; 16 U.S.C. *et seq.*) and are implemented by regulations at 50 CFR parts 611, 620, 672, and 675.

Two measures are implemented by this final rule. First, §§ 672.4 and 675.4, which govern the issuance of Federal fishing permits, are amended by prohibiting fishing in the Donut Hole by a federally permitted fishing vessel. Second, §§ 672.7 and 675.7, which govern general prohibitions, are amended to prohibit fishing in the Donut Hole by a U.S. fishing vessel and possession by such a permitted vessel in the EEZ of fish that were caught in the Donut Hole.

U.S. fishermen, who displaced foreign fleets of those nations that had a traditional fishery presence in the EEZ off Alaska, now fully utilize the groundfish resources of the EEZ off Alaska. Foreign fishermen have redirected their fishing effort to other fishing grounds, namely the Donut Hole. By the mid-1980s, catches in the Donut Hole were reported to exceed catches in the U.S. EEZ or the economic zone (EZ) of Russia. (Table 1.)

TABLE 1.—REPORTED POLLOCK CATCHES (1,000 S METRIC TONS (MT) IN THE DONUT HOLE AND IN THE U.S. EEZ AND THE EZ OF RUSSIA

Year	Donut hole	U.S. EEZ	Russian federation
1985.....	336	1,179	662
1986.....	1,061	1,189	871
1987.....	1,325	1,263	812
1988.....	1,396	1,229	1,327
1989.....	1,399	1,386	1,119
1990.....	876	1,353	814

The Donut Hole encompasses deep waters of the Aleutian Basin. The Aleutian Basin extends south into that part of the U.S. EEZ known as the Bogoslof District, defined at 50 CFR 675.2 as statistical area 518. Commercial fisheries data and scientific investigations on comparisons of age, size composition, size-at-age and genetic structure demonstrate that pollock found in the Donut Hole and the Bogoslof District are from the same Aleutian Basin stock.

The status of the Aleutian Basin pollock stock is depressed. Even though the abundance of this stock was estimated at about 5 million mt in 1987, it has declined to a low of about 0.5 million mt in 1990. The current low level

of pollock abundance is consistent with catch per unit of effort (CPUE) information obtained from the commercial fishery, as well as from NMFS stock survey data.

The Secretary implemented specifications for acceptable biological catch and total allowable catch (TAC) amounts for pollock in the Bogoslof District for 1992 equal to 25,000 mt and 1,000 mt, respectively at 57 FR 3952 (February 3, 1992). The Secretary implemented these specifications as recommended by the Council at its December 1991 meeting in response to the decline in the Aleutian Basin pollock stock.

Notwithstanding this action in the U.S. EEZ to conserve the Aleutian Basin pollock stock, U.S. vessels might continue to over-exploit this stock by fishing in the Donut Hole. Because the Aleutian Basin pollock stock moves between the EEZ and the Donut Hole, fishing in both areas will expose this stock to greater fishing effort and result in overfishing. To protect the Aleutian Basin pollock stock from over-exploitation, the Council recommended that the Secretary prohibit federally permitted U.S. fishing vessels from (1) fishing in the Donut Hole and (2) possessing or retaining on board in the EEZ off Alaska, fish caught in the Donut Hole. Even though pollock comprise more than 90 percent of the total harvests in the Donut Hole, NMFS decided that to promote efficient enforcement, a federally permitted U.S. vessel should be prohibited from fishing in the Donut Hole.

On November 18, 1991, the Third Conference on the Central Bering Sea was held in Washington, DC. At that conference, delegations from the United States, the Russian Federation, the People's Republic of China, the Republic of Korea, Poland and Japan discussed measures relating to the conservation and management of living marine resources of the Central Bering Sea, and specifically the pollock resources. The United States indicated that it would take strict measures in 1992 to conserve the depressed Aleutian Basin pollock stock.

Unbridled exploitation in the Alaska pollock fishery in the "Donut Hole" by foreign vessels during the past few years has raised serious concerns about overfishing. Overfishing of the pollock resource not only adversely affects the U.S. commercial fishing industry, but also has far-reaching consequences for other valuable species that interact with pollock in the Bering Sea ecosystem. Because of the serious conservation and environmental problems posed by the

Donut Hole pollock fishery, Presidents Bush and Gorbachev issued a joint statement during the summit meeting held in June 1990 on behalf of the United States and the Soviet Union. This statement called for cooperative efforts in the development of international conservation and management measures for the Donut Hole area. In line with this statement, the United States and Russia are seeking agreement from the other fishing nations to a moratorium on such fishing. However, there are known to be U.S. vessels that have transferred, or will transfer, fishing effort to the "Donut Hole." In order to preserve its credibility during its negotiations with foreign nations on the joint U.S./Russian proposal for a moratorium, the United States must take appropriate action as quickly as possible to ensure that its vessels do not engage in fishing in the "Donut Hole." The United States reiterated its strong support for a proposal made at the Second Conference by the Soviet delegation that all countries agree to a moratorium on pollock fishing in the Central Bering Sea in 1992. At the Third Conference, the Soviet Union contended once again that a moratorium on further pollock fishing in the Donut Hole is urgently needed to conserve the Aleutian Basin pollock stock and indicated its readiness to reduce substantially the fishing effort on pollock in its EZ. Also noted at the Third Conference was the fact that continuation of the pollock fishery in the Central Bering Sea would lead to a further disastrous decline of the resource.

In keeping with the U.S. policy of a moratorium on Donut Hole fishing, NMFS is issuing this final rule. The delayed effective date is to provide time for a vessel with a 1992 Federal fisheries permit (permit) for the EEZ off Alaska to surrender it to NMFS if that vessel will continue or if it plans to fish in the Donut Hole, or to carry or transship Donut Hole resources in the EEZ off Alaska. Permit holders that surrender permits to NMFS prior to or on August 24, 1992, in order to (1) continue fishing operations in the Donut Hole, (2) begin fishing operations in the Donut Hole or (3) carry or transship Donut Hole resources in the EEZ will be permitted to do so. However, that vessel will not be permitted to fish in the EEZ groundfish fisheries off Alaska for the remainder of the 1992 fishing year. Permit holders who do not surrender their permit but continue or begin to conduct fishing operations in the Donut Hole or carry or transship Donut Hole resources in the EEZ after August 24, 1992, will be in violation of these

regulations and subject to penalties authorized by the Magnuson Act.

Permits may be surrendered only during the time and in the manner specified in §§ 672.4(j) and 675.4(j). For the remainder of 1992 and subsequent fishing years, a U.S. fishing vessel that wishes to fish in, or possess in the EEZ fish harvested from, the Donut Hole must not apply for a permit for the Alaska groundfish fisheries.

NMFS anticipates that U.S. fishing vessels will fish for pollock in the Donut Hole during 1992 following the closure of the directed pollock fishery in the EEZ. Such U.S. vessels will be subject to the provisions of this rule.

Classification

This action is exempt from the provisions of Executive Order 12291 under section 1(a)(2) because these regulations are issued with respect to a foreign affairs functions of the United States. This action is not subject to section 553 of the Administrative Procedure Act because it involves a foreign affairs function, and is, therefore, not subject to the provisions respecting a 30-day delay of its effective date.

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this rule is necessary for the conservation and management of the groundfish fisheries off Alaska and that it is consistent with the Magnuson Act and other applicable law.

The Alaska Region, NMFS, prepared an environmental assessment (EA) for this rule and concluded that no significant impact on the environment will result from its implementation. The public may obtain a copy of the EA from the Regional Director (see **FOR FURTHER INFORMATION CONTACT**).

NMFS has determined that implementation of this rule is not likely to affect listed species in a manner or to an extent not already considered in formal consultations on these fisheries completed on April 19, 1991, June 5, 1991, and September 20, 1991. This rule does not contain a collection-of-information requirement subject to the Paperwork Reduction Act.

NMFS has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management program of the State of Alaska. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism

assessment under Executive Order 12612.

List of Subjects in 50 CFR Parts 672 and 675

Fisheries, and Recordkeeping requirements.

Dated: July 31, 1992.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries,
National Marine Fisheries Service.

For the reasons set out in the preamble, the amendments to 50 CFR parts 672 and 675 published on July 31, 1992, beginning at 57 FR 33902 are withdrawn effective August 10, 1992; and parts 672 and 675 are amended effective August 24, 1992, as follows:

PART 672—GROUND FISH OF THE GULF OF ALASKA

1. The authority citation for part 672 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 672.2 the definition of "Donut Hole" is added in alphabetical order to read as follows:

§ 672.2 Definitions.

Donut Hole means the waters of the Central Bering Sea seaward of the outer boundary of the EEZ of the United States, and seaward of the outer boundary of the economic zone of the Russian Federation.

3. In § 672.4, paragraph (j) is added to read as follows:

§ 672.4 Permits.

(j) *Condition*. No person may use a vessel for which the Regional Director has issued a permit under paragraph (c)(1) of this section to fish in the Donut Hole, or to possess fish in the EEZ that were caught in the Donut Hole, during the fishing year for which the permit was issued. However, if a permit issued to a vessel in 1992 is surrendered in accordance with this section, that vessel may be used to fish in, or possess fish caught from, the Donut Hole. A permit issued in 1992 will be deemed to be surrendered only if all copies of it are mailed to, and received by, the Alaska Regional Director, NMFS, P.O. Box 21668, Juneau, AK 99802, on or before August 24, 1992. To surrender a vessel's 1992 permit prevents participation by that vessel in the groundfish fisheries in the EEZ off Alaska for the remainder of 1992.

4. In § 672.7, paragraphs (h) and (i) are added to read as follows:

§ 672.7 Prohibitions.

(h) Fish in the Donut Hole while on board a vessel for which a permit has been issued under § 672.4 of this part during any fishing year for which the permit was issued, except that during 1992 a vessel may be used for such fishing if its 1992 permit has been surrendered to NMFS in accordance with § 672.4(j).

(i) Possess fish harvested from the Donut Hole while in the EEZ on board a vessel for which a permit has been issued under § 672.4 of this part during any fishing year for which the permit was issued, except that during 1992 a vessel may be used for such possession if its 1992 permit has been surrendered to NMFS in accordance with § 672.4(j).

PART 675—GROUND FISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

5. The authority citation for 50 CFR part 675 continues to read as follows:

Authority: 16 U.S.C. 11801 *et seq.*

6. In § 675.2 the definition of "Donut Hole" is added in alphabetical order to read as follows:

§ 675.2 Definitions.

Donut Hole means the waters of the Central Bering Sea seaward of the outer boundary of the EEZ of the United States, and seaward of the outer boundary of the economic zone of the Russian Federation.

7. In § 675.4, paragraph (j) is added to read as follows:

§ 675.4 Definitions.

(j) *Condition.* No person may use a vessel for which the Regional Director has issued a permit under paragraph (c)(1) of this section to fish in the Donut Hole, or to possess fish in the EEZ that were caught in the Donut Hole, during the fishing year for which the permit was issued. However, if a permit issued to a vessel in 1992 is surrendered in accordance with this section, that vessel may be used to fish in, or possess fish caught from, the Donut Hole. A permit issued in 1992 will be deemed to be surrendered only if all copies of it are mailed to, and received by, the Alaska Regional Director, NMFS, P.O. Box 21668, Juneau, AK 99802, on or before August 24, 1992. To surrender a vessel's 1992 permit prevents participation by that vessel in the groundfish fisheries in the EEZ off Alaska for the remainder of 1992.

8. In § 675.7, paragraphs (1) and (j) are added to read as follows:

§ 675.7 Prohibitions.

(i) Fish in the Donut Hole while on board a vessel for which a permit has been issued under § 675.4 of this part during any fishing year for which the permit was issued, except that during 1992 a vessel may be used for such fishing if its 1992 permit has been surrendered to NMFS in accordance with § 675.4(j).

(j) Possess fish harvested from the Donut Hole while in the EEZ on board a vessel for which a permit has been issued under § 675.4 of this part during any fishing year for which the permit was issued, except that during 1992 a vessel may be used for such possession if its 1992 permit has been surrendered to NMFS in accordance with § 675.4(j).

[FR Doc. 92-18704 Filed 8-7-92; 8:45 am]

BILLING CODE 3510-22-M

50 CFR Part 672

[Docket No. 911176-2018]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for sablefish by vessels using hook-and-line gear in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the share of the sablefish total allowable catch (TAC) assigned to hook-and-line gear in this area.

DATES: Effective 12 noon, Alaska local time (A.L.T.), August 5, 1992, through 12 midnight, A.L.T., December 31, 1992.

FOR FURTHER INFORMATION CONTACT:

Patsy A. Bearden, Resource Management Specialist, Fisheries Management Division, NMFS, 907-586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the exclusive economic zone within the GOA is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the GOA (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

The share of the sablefish TAC assigned to hook-and-line gear in the

Western Regulatory Area, which is defined at § 672.2, is established by the final notice of specifications (57 FR 2844, January 24, 1992) as 2,000 metric tons.

Under § 672.24(c)(3)(i), the Director of the Alaska Region, NMFS, has determined that the share of the sablefish TAC assigned to hook-and-line gear in the Western Regulatory Area will be taken before the end of the year. Therefore, to provide adequate bycatch amounts of sablefish to ensure continued groundfish fishing activity by hook-and-line gear, NMFS is prohibiting directed fishing for sablefish by operators of vessels using hook-and-line gear in the Western Regulatory Area, effective from 12 noon, A.L.T., August 5, 1992, through 12 midnight, A.L.T., December 31, 1992.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under 50 CFR 672.24 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 4, 1992.

Joe P. Clem,

Acting Director of Office Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-18877 Filed 8-5-92; 1:03 pm]

BILLING CODE 3510-22-M

50 CFR Part 675

[Docket No. 911172-2021]

Groundfish Fishery of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Inseason adjustment, rescission of closure, request for comments.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that amounts of Pacific herring (herring) designated as the prohibited species catch (PSC) limit, and as fishery allowances specified for trawl fisheries of the Bering Sea and Aleutian Islands Area (BSAI), have been misspecified. NMFS is adjusting the size of the herring PSC limit, and redistributing the additional amounts among trawl fisheries, as needed. Revision of the herring allowance for the

yellowfin sole fishery necessitates rescission of a closure to the Herring Savings Areas (HSA) of the BSAI for directed fishing of yellowfin sole with trawl gear established earlier in 1992.

DATES: Effective 12 noon, Alaska local time (A.L.T.), August 3, 1992, through 12 midnight, A.L.T., December 31, 1992. Comments are invited until August 20, 1992.

ADDRESSES: Comments should be mailed to Ronald J. Berg, Chief, Fisheries Management Division, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802-1668, or be delivered to 9100 Mandenhall Mall Road, Federal Building Annex, suite 6, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Jessica A. Gharrett, Fishery Management Biologist, NMFS, 907-586-7229.

SUPPLEMENTARY INFORMATION:

Respecification of herring PSC limit

Regulations implementing the Fishery Management Plan (FMP) for the Groundfish Fishery of the BSAI at § 675.21(a)(6) establish a PSC for herring of 1 percent of the annual Eastern Bering Sea herring biomass. In 1992, this amount is 956 metric tons (mt) (57 FR 3952, February 3, 1992). It is apportioned to certain BSAI target trawl fisheries, which are defined at § 675.21(g). Target fisheries, the herring PSC limit, and allowances to the target fisheries were subsequently modified by an emergency interim rule (57 FR 11433, April 3, 1992), which was further revised (57 FR 14667, April 22, 1992) and extended (57 FR 29223, July 1, 1992).

An inseason recalculation of herring biomass prepared in July 1992 by the Alaska Department of Fish and Game indicates that the original biomass estimate is substantially below 230,752 mt, the biomass estimate indicated by current scientific information. Based on this new information, NMFS finds that the herring trawl PSC limit for 1992 was misspecified. NMFS makes an inseason adjustment of the 1992 herring PSC limit for trawl gear in the BSAI to 2,308 mt, as authorized by regulations at § 675.20(e)(1)(iii). This adjustment satisfies required conditions under §§ 675.20(e)(2)(ii) and (e)(5) because the best available scientific information of herring biomass now shows that a limit of 956 mt is incorrect and a limit of 2,308 mt is appropriate.

Respecification of Trawl Fishery Allowances

Fishery categories established for the purpose of allocating herring PSC limits

as bycatch allowances among trawl target fisheries were most recently defined in an extension of an emergency rule (57 FR 29223, July 1, 1992). Fisheries established include: midwater pollock, yellowfin sole, rocksole/other flatfish, Greenland turbot/arrowtooth flounder/sablefish, rockfish, Pacific cod, and non-midwater pollock/Atka mackerel/squid/"other species" ("other fishery"). These fishery categories were assigned allowances of the herring PSC limit in accordance with expected bycatch needs for 1992. Adjustment of the herring limit from 956 to 2,308 mt necessitates adjustment of trawl fishery allowances.

Of the five 1992 BSAI trawl fishery categories that have herring allowances, only those allowances for midwater pollock and yellowfin sole require adjustment, as many fisheries are closed, and remaining amounts of herring are deemed sufficient for others. At present, directed fisheries are closed to trawl gear in the BSAI for the remainder of 1992 for Greenland turbot, arrowtooth flounder, sablefish, Pacific cod, and for all rockfishes. The rock sole/other flatfish category is closed in Zones 1 and 2H. In the "other fishery," Atka mackerel and fishing for pollock with trawls other than pelagic trawls are closed. Remaining amounts of herring allowance specified for the "other fishery" and rock sole/other flatfish fishery categories are expected to be sufficient for the rest of the 1992 fishing year. Therefore, NMFS is apportioning the entire increase in herring PSC, 1,352 mt, to midwater pollock and yellowfin sole fisheries in the same proportion as existed in the specifications established in the emergency rule, as shown in Table 1.

Rescission of Closure

The herring allowance specified for the trawl yellowfin sole fishery in the emergency interim rule, 134 mt, was reached earlier in 1992. As required by regulations at § 675.21(h)(2), the directed fishery for yellowfin sole with trawl gear in the HSA of the BSAI was closed, effective June 29, 1992 (57 FR 29656, July 6, 1992). Because the herring allowance for this directed fishery is increased to 391 mt, the Regional Director finds that the directed fishery closure is no longer warranted. Therefore, NMFS rescinds the closure of the HSA to vessels participating in the directed fishery for yellowfin sole with trawl gear, effective 12 noon, A.L.T., August 3, 1992. The closure will be reimplemented if and when the respecified allowance for the yellowfin sole fishery is reached, later in 1992.

Classification

This action is taken under § 675.20(e)(iii) and (e)(5) and complies with Executive Order 12291.

This inseason adjustment is categorically excluded from the requirement to prepare an environmental assessment (EA) by NOAA Administrative Order 216-6. The environmental impacts of this action have already been analyzed in the EA for Amendment 16a to the BSAI FMP. Based on this analysis, the Assistant Administrator has determined that there will be no significant impact on the environment as a result of this action. A copy of the EA for Amendment 16a can be obtained from the Regional Director (see "ADDRESSES").

The Assistant Administrator for Fisheries, NOAA, finds for good cause that it is impractical and contrary to the public interest to provide prior public notice and comment on the inseason adjustment or rescission of closure. Immediate effectiveness of this notice is necessary to prevent foregone revenue to the yellowfin sole fishery, which would otherwise be prevented from conducting operations in nearshore areas of the BSAI. Interested persons are invited to submit comments in writing (see "ADDRESSES") on or before August 20, 1992.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

(Authority: 16 U.S.C. 1801 *et seq.*)

Dated: August 5, 1992.

Joe P. Clem,

Acting Director of Office Fisheries, Conservation and Management, National Marine Fisheries Service.

TABLE 1.—RESPECIFICATION OF THE PACIFIC HERRING PSC LIMIT AND OF ALLOWANCES TO BSAI TRAWL FISHERIES FOR 1992

Trawl target	Previous allowance	Change this notice	New allowance
Midwater pollock.....	573	+ 1,095	1,668
Yellowfin sole.....	134	+257	391
Rocksole/O. Flatfish....	0	0	0
G. turbot/arrowtooth/sablefish.....	0	0	0
Rockfish.....	10	0	10
Pacific cod.....	29	0	29
Pick/Amck/other.....	210	0	210
Total.....	956	+1,352	2,308

[FR Doc. 92-18876 Filed 8-5-92; 1:03 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register

Vol. 57, No. 154

Monday, August 10, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 297

RIN 3206-AF03

Personnel Records

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: The Office of Personnel Management (the Office) proposes to revise its regulations regarding disclosure of records covered by the Privacy Act of 1974. This regulatory change will clarify that such records are not to be disclosed in response to attorney-issued or clerk-issued subpoenas, unless the subpoena has the specific approval of a judge of a court of competent jurisdiction. The Office has concluded that such disclosures should no longer be made because they are inconsistent with the exception to the Privacy Act's disclosure prohibition at 5 U.S.C. 552a(b)(11).

DATES: Comments must be received by October 9, 1992.

ADDRESSES: Comments should be sent or delivered to the Assistant Director for Workforce Information, Personnel Systems and Oversight Group, Room 7494, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: John Sanet, Privacy Act Advisor, (202) 606-1955.

SUPPLEMENTARY INFORMATION: The Privacy Act of 1974, at 5 U.S.C. 552a(b), states that "no agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains," unless disclosure of the record would be pursuant to one of the Act's 12 exceptions. Under the exception to the Privacy Act's disclosure prohibition at 5

U.S.C. 552a(b)(3) for a "routine use," the Office previously has disclosed Privacy Act-covered records in response to an "attorney-issued" or "clerk-issued" subpoena. The Office has concluded that such disclosures should no longer be made because they are inconsistent with the exception to the Privacy Act's disclosure prohibition at 5 U.S.C. 552a(b)(11). See *Doe v. Stephens*, 851 F.2d 1457 (D.C. Cir. 1988).

Therefore, the Office's proposed change to its regulation will make it clear that, where the Government is not a party to litigation or administrative action, records will only be disclosed pursuant to an order signed by a judge. The Office considers a subpoena signed by a judge of a court of competent jurisdiction to be a court order as described in section (b)(11) of the Privacy Act. See, e.g., *Moore v. United States Postal Service*, 609 F. Supp. 681 (E.D. N.Y. 1985).

In a notice appearing elsewhere in this issue of the *Federal Register*, the Office is planning to change the routine use applicable to several published systems of records that permits a Federal agency to disclose information via subpoena to a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency. This projected change to those Privacy Act system notices, which the public also has an opportunity to comment on, will limit nonconsensual disclosures in response to a subpoena only to those circumstances where the Government is in a proceeding before a court, adjudicative body, or other administrative body and for which it has been determined that the disclosure of the record is compatible with the purpose for which the records were collected.

E.O. 12291, Federal Regulation

The proposed regulatory change does not meet the standards set forth in Executive Order 12291 for classification as a major rule, and no regulatory analysis statement is required.

Regulatory Flexibility Act

I certify that the proposed regulatory change will not have a significant impact on any substantial number of small entities as defined by the Regulatory Flexibility Act, Pub. L. 96-354, because it applies only to Federal employment and personnel records.

List of Subjects in 5 CFR Part 297

Administrative practice and procedure, Privacy, Records.

Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, OPM proposes to amend part 297 of title 5 of the Code of Federal Regulations as follows:

PART 297—PRIVACY PROCEDURES FOR PERSONNEL RECORDS

1. The authority citation for part 297 continues to read as follows:

Authority: Sec. 3, Public Law 93-579, 88 Stat. 1896 (5 U.S.C. 552a).

2. In § 297.402, an introductory paragraph and paragraphs (d), (e), (f), (g), (h), and (i) are added to read as follows:

§ 297.402 Disclosure pursuant to a compulsory legal process served on the Office.

For purposes of this section, the Office considers that a subpoena signed by a judge is equivalent to a court order.

(d) Before responding to the order or subpoena signed by a judge, an official with authority to disclose records under this subpart in consulting with legal counsel will ensure that—

(1) The requested material is relevant to the subject matter of the related judicial or administrative proceeding;

(2) Motion is made to quash or modify an order that is unreasonable or oppressive;

(3) Motion is made for a protective order when necessary to restrict the use or disclosure of any information furnished for purposes other than those of the involved proceeding; or

(4) Request is made for an extension of the time allowed for response, if necessary.

(e) If an order or subpoena signed by a judge for production of documents also requests appearance of an Office employee, the response should be to furnish certified copies of the appropriate records. In those situations where the subpoena is not signed by a judge, the Office will return the document to the sender and indicate that no action will be taken to provide the records until the subpoena is signed by a judge.

(f) If oral testimony is requested by the order or subpoena signed by a judge, an explanation, which sets forth the testimony desired, must be furnished to the Office system manager. The individual who has been ordered or subpoenaed to testify should consult with counsel to determine the matters about which the individual may properly testify.

(g) In all situations concerning an order, subpoena signed by a judge, or other demand for an employee of the Office to produce any material or testimony concerning the records that are subject to the order, that are contained in the Office's systems of records, and that are acquired as part of the employee's official duties, the employee shall not provide the information without prior approval of the appropriate Office official.

(h) If it is determined that the information should not be provided, the individual ordered or subpoenaed to do so should respectfully decline to comply with the demand based on the instructions from the appropriate Office official.

(i) Notice of the issuance of the ex parte order or subpoena signed by a judge is not required if the system of records has been exempted from the notice requirement of 5 U.S.C. 552a(e)(8) pursuant to 5 U.S.C. 552a(j) by a Notice of Exemption published in the Federal Register.

§ 297.403 [Removed]

§ 297.404 [Redesignated as § 297.403]

3. Section 297.403 is removed. Section 297.404 is redesignated as § 297.403.

[FR Doc. 92-18734 Filed 8-7-92; 8:45 am]

BILLING CODE 6325-01

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 58

[DA-90-018]

RIN 0581-AA45

Grading and Inspection, General Specifications for Approved Plants and Standards For Grades of Dairy Products; Proposed Revision of Subpart A—Regulations Governing the Inspection and Grading Services of Manufactured or Processed Dairy Products

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The regulations proposed for revision, with the exception of periodic user fee increases and minor administrative changes, have not been updated since December 1, 1976. This document proposes a general revision of the regulations to reflect more desirable ways of carrying out the dairy inspection and grading program. A major thrust of this revision is to strengthen those regulations that pertain to program integrity. These latter changes are not expected to have any major impact on program participants, however, because most participants are already operating in a manner that is consistent with the proposed changes.

DATES: Comments must be submitted on or before October 9, 1992.

ADDRESSES: Comments should be sent to: Director, USDA/AMS/Dairy Division, room 2968-S, P.O. 96456, Washington, DC 20090-6456. All comments received in response to this proposed rule will be available for public inspection in room 2750-S between 8 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: F. Tracy Schonrock, Chief, Dairy Grading Branch, USDA/AMS/Dairy Division, room 2750-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-3171.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under USDA procedures implementing Executive Order 12291 and Department Regulation 1512-1 and has been classified as a "non-major" rule under the criteria contained therein.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

The proposed rule also has been reviewed in accordance with the Regulatory Flexibility Act, 5 U.S.C. section 601 et seq. The Administrator, Agricultural Marketing Service, has determined that it will not have a significant impact on a substantial number of small entities. The program is voluntary and funded entirely by user fees. The proposed rule will not affect the cost of inspection and grading services or limit or impede voluntary participation.

The Agricultural Marketing Act of 1946, as amended, authorizes the

Secretary of Agriculture to provide Federal dairy grading and inspection services that facilitate marketing and help consumers obtain the quality of dairy products they desire. This proposed rule provides for a general revision of the regulations to reflect more desirable ways of carrying out the dairy inspection and grading programs, including strengthening the regulations that pertain to program integrity. This document proposes the following changes in the regulations for the Dairy Inspection and Grading program (the section numbers referenced reflect the proposed renumbering of subpart A):

The information collection requirements contained in this proposed have been previously approved by the Office of Management and Budget and assigned OMB Control No. 0581-0126.

1. Extensive restructuring of the regulations' sections, the addition of new provisions, and the deletion of unnecessary or outdated information and sections.

2. Expansion of § 58.1, Meaning of words. This section will be expanded to incorporate many previously undefined or new terms proposed in the revision. The expanded definitions will be clearer and will make the regulations more readable. Terms have been deleted which no longer accurately reflect the Department's organizational structure or the services available. Where appropriate, editorial changes have been made to the remaining regulations to reflect these changes in terminology.

3. Consolidation of § 58.10, Filing of application, and 58.11, Approval of the application. There will be no change in the intent of this requirement.

4. Expansion of § 58.15, Accessibility and condition of product. This section will be expanded to require an applicant for inspection or grading services to give access to its plant facilities and equipment to grading personnel. The additional wording will clarify the requirements necessary to protect the integrity of the Dairy Grading Branch's inspection and grading services.

5. Expansion of § 58.18, Inspection or grading certificates, memoranda, or reports. This section will be expanded to add two additional management and program integrity control devices: Product control tags, which will allow rejected or suspect commodities to be identified and controlled pending investigation, analysis, or disposition; and an inspector identification number, which has been incorporated within the official shield stamp used to identify graded or inspected products.

6. Addition of § 58.20, Issuance of take-off certificates. This addition will

clarify the conditions under which a take-off certificate can be issued. A take-off certificate is a certificate which incorporates the information from one or more valid certificates on a new certificate without requiring the applicant to submit the product for additional inspection or grading.

7. Addition of § 58.23, Reserve, sample for inspection or grading. This addition will clearly define for the users of the service the selection and appropriate uses of reserve samples.

8. Addition of § 58.24, Who may request retest service, 58.25. How to request retest service, and 58.26, Issuing certificates for retest service results. These sections will establish the criteria for retest services. The creation of the Science Division within the Agricultural Marketing Service has resulted in changes in the procedures for laboratory analyses and retesting of results questioned by an applicant. The new sections provide specific information regarding who may request a retest, how to apply for a retest, when a request for retesting will be accepted, and the issuance of certificates documenting the results of the retest. This addition is necessary to fully inform the users of the services available.

9. Expansion of § 58.27 through 58.34, which govern appeals of inspections, gradings, and retest services. These sections will set forth more clearly the criteria for conducting appeals for the various types of service provided. The expansion includes new criteria for the appeal of a retest service, which has been added to the regulations (see proposed change 8).

10. Revision of wording for § 58.35 through 58.37 covering reinspections and regardings. This revision will clarify the interrelationship between the various options for retest service, reinspections, and appeal inspections.

11. Revision of wording and addition of § 58.39 through 58.45. This revision will set forth licensing requirements regarding who may be licensed, the duration of a license, renewal of a license, suspension or revocation of a license, surrender of a license card, and the proper identification of a licensed inspector or grader.

12. Deletion of § 58.44, Fees for laboratory analyses. The Science Division now has responsibility for establishing laboratory fees and changes which will be set forth in other regulations.

13. Addition of § 58.53 covering certain fees. This addition provides for imposing fees on applicants for the collection and testing of samples to determine conformance with the regulations and to monitor the inspection and grading program.

14. Addition of a depiction of a U.S. Grade B shield to Section 58.58, Approval and form of official grade label or quality identification. This grade shield is available to the users of the service.

15. Expansion of § 58.62, Keeping quality samples. This expansion will strengthen the criteria for evaluating keeping quality, which will enhance the integrity of the grade label program.

16. Addition of § 58.65, Nondiscrimination. This addition will reinforce the Dairy Division's commitment to providing all services and the licensing of inspection, grading, or sampling personnel without discrimination as to age, race, marital status, color, religion, sex, or national origin.

List of Subjects in 7 CFR Part 58

Dairy products, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 58, be amended as follows:

PART 58—[AMENDED]

1. The authority citation for part 58 continues to read as follows:

Authority: Secs. 202–208, 60 Stat. 1087, as amended; 7 U.S.C. 1621–1627, unless otherwise noted.

2. Subpart A of part 58 is revised as follows:

Subpart A—Regulations Governing the Inspection and Grading Services of Manufactured or Processed Dairy Products

Definitions

Sec.

- 58.1 Meaning of words.
- 58.2 Designation of official certificates, memoranda, marks, identifications and devices for the purpose of the Agricultural Marketing Act of 1946.

Administration

- 58.3 Authority.

Inspection or Grading Service

- 58.4 Basis of service.
- 58.5 When service may be provided.
- 58.6 Supervision of service.
- 58.7 Who may obtain service.
- 58.8 How to file an application.
- 58.9 Form of application.
- 58.10 Approval of the application.
- 58.11 When an application may be rejected.
- 58.12 When an application may be withdrawn.
- 58.13 Authority of the applicant.
- 58.14 Who shall provide service.
- 58.15 Accessibility and condition of product and plant facilities.
- 58.16 Disposition of samples.
- 58.17 Order of service.
- 58.18 Inspection or grading stamps, tags, certificates, memoranda, or reports.

Sec.

- 58.19 Issuance of inspection or grading certificates and reports.
- 58.20 Issuance of take-off certificates.
- 58.21 Disposition of inspection or grading certificates or reports.
- 58.22 Advance information.
- 58.23 Reserve sample for inspection or grading.

Retest Service

- 58.24 Who may request retest service.
- 58.25 How to request retest service.
- 58.26 Issuing certificates for retest service results.

Appeal of Inspection, Grading or Retest Service

- 58.27 When an appeal inspection, grading or retest service may be requested.
- 58.28 How to request an appeal inspection, grading or retest service.
- 58.29 Record of filing date.
- 58.30 When an application for appeal inspection, grading or retest service may be refused.
- 58.31 When an application for an appeal inspection, grading or retest service may be withdrawn.
- 58.32 Order in which appeal inspections, gradings or retest service are performed.
- 58.33 Who shall conduct appeal inspections, gradings or retest service.
- 58.34 Appeal inspection, grading or retest service certificate or report.

Reinspection or Regrading

- 58.35 Application for reinspection or regrading.
- 58.36 Inspection of reworked or reconditioned lots.
- 58.37 Reinspection or regrading certificate.

Superseded Certificates

- 58.38 Superseded certificates.

Granting Authority to Inspectors and Graders to Perform Official Duties

- 58.39 Who may be authorized to perform official duties.
- 58.40 Duration of license validation.
- 58.41 License renewal.
- 58.42 Suspension or revocation of license.
- 58.43 Surrender of license.
- 58.44 Identification.
- 58.45 Financial interest of licensees.

Fees and Charges

- 58.46 Payment of fees and charges for inspection and grading services.
- 58.47 Fees for holidays or other non-regular workdays.
- 58.48 Fees for retest service.
- 58.49 Fees for appeal inspection, or grading.
- 58.50 Fees for additional copies of certificates or inspector reports.
- 58.51 Traveling expenses and other charges.
- 58.52 Fees for inspection, grading, and sampling.
- 58.53 Fees for conformance and monitoring samples.
- 58.54 Fees for continuous resident service.
- 58.55 Reimbursement for service performed under cooperative agreement.

Marking, Branding, and Identifying Product

- 58.56 Authority to use official identification.

- Sec.
- 58.57 Forms or types of official identification.
- 58.58 Approval and form of official grade label or quality identification.
- 58.59 Information required on official grade label or quality identification.
- 58.60 Time limit for packaging inspected or graded products with official grade label or quality identification.
- 58.61 Applicant responsibilities for packaging products with official grade label or quality identification.
- 58.62 Keeping quality samples.
- 58.63 Product not eligible for packaging with official identification.

Violations

- 58.64 Debarment of service.

Miscellaneous

- 58.65 Employee conduct and responsibilities.
- 58.66 Nondiscrimination.
- 58.67 Political activity.
- 58.68 Report of violations.
- 58.69 Other applicable regulations.
- 58.70 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

Subpart A—Regulations Governing the Inspection and Grading Services of Manufactured or Processed Dairy Products

Definitions

§ 358.1 Meaning of words.

For the purpose of the regulations in this subpart, words in the singular form will apply to the plural form and vice versa, and any use of the masculine form will apply to the feminine form and vice versa, as the case may be. Unless the context otherwise requires, the following terms are defined as follows:

Act means the applicable provisions of the Agricultural Marketing Act of 1946 (7 United States 1621-1627), or any other act of Congress conferring like authority.

Administrator means the Administrator of the Agricultural Marketing Service, or any other officer or employee of the Agricultural Marketing Service to whom authority may be, or has been, delegated to act in the Administrator's stead.

Adulteration means the admixture of a foreign or baser substance to a product or the preparation for sale of a product with an ingredient which is not part of the professed product. Adulteration of a product also means the absence of an essential ingredient, a defect artificially concealed, or a product exposed to disease, or unwholesome or unsanitary conditions.

Agricultural Marketing Service or AMS means the Agricultural Marketing Service of the Department.

Appeal grading or appeal inspection means the subsequent grading or inspection of a previously graded or inspected product because an interested party disputes the finding of the original grading/inspection that was determined according to the provisions of this subpart.

Applicant means any interested party who requests inspection or grading service.

Approved laboratory means a laboratory that operates under a USDA approval or monitoring program, as set forth by the Administrator, and whose facilities and equipment used for official testing have been approved by the Administrator to perform such official tests in accordance with this subpart.

Approved plant means a processing plant, composed of one or more buildings, or parts thereof, at one location, at which the facilities and methods of operation are surveyed and approved by the Branch Chief as eligible for inspection or grading service in accordance with this subpart and Subpart B—General Specifications for Dairy Plants Approved for USDA Inspection and Grading Service.

Approved process means a dairy or related product process which has been surveyed and determined to be of sanitary design, construction and operation and thus adequate to produce wholesome quality products in accordance with this subpart and Subpart B—General Specifications for Dairy Plants Approved for USDA Inspection and Grading Service. That a process is determined to be an "approved process" under this subpart does not mean that the USDA guarantees the condition, quality or origin of any product produced thereby.

Approved product means a dairy or related product which has been processed or manufactured in an approved plant from dairy ingredients which have also been produced by an approved plant. Only approved products are eligible for inspection and grading services.

Branch Chief means the Chief of the Dairy Grading Branch, or any officer or employee of that branch to whom authority may be, or has been, delegated to act in the Branch Chief's stead.

Business day means the established National Field Office working hours, Monday through Friday, except holidays.

Condition of container means the degree to which a container is free from defects which would affect its usefulness, which may include defects in appearance.

Condition of product or condition means the degree to which a product is defective or free from defects which

affect its use, including without limitation the state of preservation, cleanliness, soundness, wholesomeness, and fitness for human food.

Continuous resident service or resident service means inspection or grading service performed by an inspector or grader assigned to a dairy plant on a continuous, year-round, resident basis.

Dairy Grading Branch means the Dairy Grading Branch of the Dairy Division, AMS.

Days means the calendar days unless specifically modified.

Department or USDA means the United States Department of Agriculture.

Director means the Director of the Dairy Division, AMS, or any officer or employee of the Division to whom authority may be, or has been, delegated to act in the Director's stead.

Division means the Dairy Division of the Agricultural Marketing Service.

Grade or class means any classification assigned to a product based on the evaluation of identified, essential physical, chemical or microbiological characteristics.

Holiday means the legal public holidays specified in 5 U.S.C. 6103(a) and any other day declared to be a holiday by Federal Statute or Executive Order. Under 5 U.S.C. 6103, as amended, if a specified legal public holiday falls on a Saturday, the preceding Friday shall be considered to be the holiday, or if a specified legal public holiday falls on a Sunday, the following Monday shall be considered to be the holiday.

Inspection or grading office means the office of any inspector or grader.

Inspection or grading service or service means the initial inspection of a dairy plant's facilities, equipment and operations (such as processing, manufacturing, packaging and repackaging, and quality controls), so that the following inspection and grading services may be performed:

- (1) drawing samples of any product;
- (2) determining the class, grade, quality, composition, size, quantity, suitability for intended use, or condition of any product by examining each unit or representative samples;
- (3) determining the condition of product containers;
- (4) authorizing a product or packaging to carry an official identification;
- (5) regrading or appeal grading a previously graded product;
- (6) inspecting the packaging of a previously inspected or graded product;
- (7) reinspection or appeal inspection;
- (8) denaturing of products determined to be unfit for human consumption;

(9) reviewing and inspecting dairy processing equipment and facilities design; and

(10) issuing inspection or grading certificates, or sampling, inspection or other reports, related to any of the services rendered.

Inspector or grader means any Federal employee or cooperating State employee with a license issued by the Branch Chief to perform one or more types of inspection or grading services.

Instructions, guidelines and procedures means the instructions, guidelines and procedures issued by the Dairy Grading Branch for the implementation of this subpart.

Interested party means any person, firm or agency financially interested in a transaction involving any inspection or grading service.

Keeping quality test means a test to determine the storage characteristics of products either by simulating storage conditions or by accelerating defect development by elevated storage temperatures and shorter holding times.

National Field Director means the director of the Dairy Grading Branch's field operations, or any officer or employee of the Branch to whom authority may be, or has been, delegated to act in the Director's stead.

Non-regular workday means any Saturday, Sunday or holiday or work hours in excess of the established tour of duty.

Person means any individual, partnership, association, business, trust or corporation, or any organized group of persons, whether incorporated or not.

Plant survey or plant inspection means an appraisal of the plant or a part of the plant to determine the extent to which the facilities, equipment, method of operation, sanitation and incoming raw material are in accordance with the provisions of this subpart and Subpart B—General Specifications for Dairy Plants Approved for USDA Inspection and Grading Service. A plant survey shall determine the plant's eligibility for inspection or grading service.

Product means butter, butteroil, cheese (whether natural or processed), margarine, milk, cream, milk products (whether dried, frozen, evaporated, stabilized, fractionated, concentrated or condensed), frozen desserts, casein and caseinates, lactose and any other food product which is prepared or manufactured, in whole or in part, from any of the aforesaid products, or any product the Administrator may designate.

Quality means the relative degree of excellence of any product as determined by its inherent properties.

Random sampling means selecting samples in an indiscriminate pattern to

ensure that each member of a lot has the same chance of being selected.

Regrading or reinspection means the grading or inspection of a previously graded or inspected product after a period of time or after discovery by a supervisor of an improper or incorrect grading procedure or result during the earlier grading session, or when there has been a change in product location or conditions under which the product is stored or handled.

Regular workday means an established tour of duty, Monday through Friday, except a holiday.

Regulations means the provisions of this subpart.

Reserve samples means a duplicate set of samples taken from the same lot during the original inspection or grading.

Retest or retest service means the subsequent testing of a previously tested sample because an interested party disputes the original laboratory analysis, as determined according to provisions of this subpart.

Reworked or reconditioned lot means a lot which failed the original inspection for any reason, and has been altered and submitted for inspection again in accordance with section 58.36.

Sampling report means a document issued by an inspector or grader which identifies the samples taken for inspection or grading service.

Take-off certificate means an official certificate created by combining all or portions of one or more official certificates onto one document.

Tour of duty means the hours of a work day (daily tour of duty) or the regular or non-regular workdays of a week (weekly tour of duty) that cover a scheduled workweek.

Wholesomeness means a product's freedom from adulteration or defects that would render the product unfit for human consumption.

§ 58.2 Designation of official certificates, memoranda, marks, identifications and devices for the purpose of the Agricultural Marketing Act of 1946.

Subsection 203(h) of the Agricultural Marketing Act of 1946, as amended, provides criminal penalties for specific offenses related to the misuse of official certificates, memoranda, marks or identifications, and devices for making such marks or identifications, issued or authorized under section 203 of the Act, and to certain misrepresentations about the inspection or grading of agricultural products under section 203 of the Act. For the purposes of subsection 203 (h) of the Act and the provisions of this subpart, the following definitions shall apply:

(a) *Official certificate* means any form of certification, written or printed (including that prescribed in § 58.18), used under the regulations of this

subpart to certify the following:

- (1) Inspection of a dairy processing plant or equipment,
- (2) Class, grade, quality, size, quantity, or condition of product; and
- (3) Conformance of products and packaging material to applicable specifications.

(b) *Official memorandum* means any initial record of findings, processing or plant-operation reports, and other supporting documentation made by an authorized person in the process of inspecting, grading, determining compliance, or sampling pursuant to the regulations in this subpart.

(c) *Official identification or official mark* means any form of identification or mark (including, but not limited to, printed labels, identification tape, product control tags, and those described in §§ 58.56 through 58.59) approved by the Branch Chief and authorized to be affixed to or printed on the packaging material of any product. The official identification certifies the inspection, grade, quality, size, quantity, or condition of the product and the conformance of the product to the applicable requirements specified in this subpart. It also identifies products for which service is provided under the regulations in this subpart.

(d) *Official device* means a stamping or branding device, or any other mechanically or manually operated tool, stencil, evidence tape, tag, or printed label approved by the Branch Chief for use in applying an official mark or other identification to any product or packaging material.

Administration

§ 58.3 Authority.

The Branch Chief is charged with the administration, under the general supervision and direction of the Director, of the regulations and the Act insofar as they relate to this subpart.

Inspection or Grading Service

§ 58.4 Basis of service.

Inspection or grading services shall be performed in accordance with the provisions of this subpart, the instructions, guidelines and procedures issued or approved by the Branch Chief, the U.S. standards for grades, the Federal specifications, and the specifications defined in a specific purchase contract.

§ 58.5 When service may be provided.

Subject to the provisions of this subpart, inspection or grading services shall be performed only when a qualified inspector or grader is available, and when the plant facilities and conditions, as determined by the Branch Chief, are suitable for

conducting such inspection or grading service.

§ 58.6 Supervision of service.

(a) All inspection or grading services are subject to supervision by a supervisory inspector or grader, the Assistant National Field Director, the National Field Director, the Branch Chief, or any employee of the Branch designated by the Branch Chief to act in a supervisory capacity.

(b) Whenever there is evidence that the inspection or grading service has been incorrectly performed, the supervisor shall immediately conduct or arrange for a reinspection or regrading. The results of the reinspection or regrading shall supersede those of the previous inspection or grading and a new certificate or report shall be issued to that effect.

§ 58.7 Who may obtain service.

Any interested person or party may apply for inspection or grading service.

§ 58.8 How to file an application.

(a) *Fee basis.* Applications for inspection or grading services should be made to the National Field Director. An applicant for such services should apply as early as possible, but no later than seven days before the date of such inspection or grading. The National Field Director may, however, approve applications made later than seven days before the inspection or grading date. The National Field Director may require written confirmation of any verbal request for inspection or grading services.

(b) *Continuous resident service basis.* An application for inspection or grading service on a continuous resident service basis, as provided in section 58.54, shall be made in writing. Written application forms shall be approved by and filed with the Branch Chief.

§ 58.9 Form of application.

(a) Applications for inspection or grading service shall include all information that the Branch Chief requires as to the type of service requested, the kind of products to be graded, the place of manufacture, processing, or packaging and the location where the inspection or grading service is to be performed, in accordance with the provisions of this subpart.

(b) Each application for inspection or grading service, whether verbal or written, shall be deemed to include a verification by the applicant that the products to be graded are properly identified and meet all regulations and composition requirements, and that all

plant facilities, equipment and records will be made available for inspection in accordance with all instructions, guidelines, and procedures issued by the Branch Chief. The information on the application shall, to the best of the applicant's knowledge, be complete and accurate, and not factually misleading as to the product or its condition.

§ 58.10 Approval of the application.

The Branch Chief may approve an application for inspection or grading service if:

- (a) It is filed pursuant to the provisions of this subpart;
- (b) A qualified inspector or grader is available;
- (c) The plant facilities and conditions are suitable for conducting the inspection or grading service; and
- (d) The product has been manufactured or processed in an approved plant.

§ 58.11 When an application may be rejected.

(a) The Branch Chief may reject an application for inspection or grading service if:

- (1) The applicant fails to meet either the application requirements prescribed in this subpart or the conditions for receiving such service;
- (2) The product is owned by, or located on the premises of, a person currently denied the benefits of the Act;
- (3) The applicant has substantial financial ties to a person who is currently denied the benefits of the Act, or who has been adjudged, in an administrative or judicial proceeding, responsible in any way for a current denial of benefits of the Act to any other person.
- (4) The applicant is currently denied inspection or grading services under the Act.
- (5) The product was produced from unwholesome raw material or under unsanitary or otherwise unsatisfactory conditions as determined by the USDA;
- (6) The product is adulterated;
- (7) The product is of illegal composition under federal law, or has inferior keeping quality;
- (8) The product was produced in a plant that is not currently approved for inspection or grading service by the Dairy Grading Branch.
- (9) Any fees billed to the applicant are not paid within 30 days; or
- (10) The applicant has failed to comply with the Act or this subpart or with the instructions, guidelines or procedures issued hereunder.

(b) The National Field Director or his or her designated representative shall provide notice to an applicant whose

application is rejected, and shall explain the reason(s) for the rejection. If such notification is made verbally, written confirmation may be provided.

§ 58.12 When an application may be withdrawn.

The applicant may at any time withdraw an application for inspection or grading services. The applicant shall be responsible for any expenses incurred by AMS in connection with the withdrawn application.

§ 58.13 Authority of the applicant.

The Branch Chief has discretion to require proof of the authority of the person applying for any inspection or grading services.

§ 58.14 Who shall provide service.

Inspection and grading services shall be performed by a Federal or cooperating State inspector or grader assigned by the National Field Director or the National Field Director's designated representative. Only the assigned inspector or grader, except as provided in § 58.6 and § 58.27 through 58.37, is authorized to assign official grade designations, product acceptance or rejection, plant approval, and equipment design acceptance or rejection according to instructions, guidelines or procedures provided for in this subpart and the purchase contract specifications.

§ 58.15 Accessibility and condition of product and plant facilities.

(a) The applicant must ensure that each lot of product for which inspection or grading service is requested is readily accessible, so the inspector or grader can select representative samples of the product to determine its class, grade, quality, quantity and condition. Product that has been damaged or stored in unsanitary conditions will not be inspected or graded. If the Dairy Grading Branch allows the applicant to present sample packages for inspection or grading, the samples must be representative of the lot, and the remainder of the lot must be accessible, so the inspector or grader can select additional samples.

(b) The applicant shall provide a room or area where the inspection or grading service will be performed. The room or area shall be acceptable to USDA: It shall be clean and sanitary, free from foreign odors, excessive noise or traffic, and have adequate lighting, ventilation, and temperature control. The applicant is required to provide or arrange for assistance for the grading activities.

(c) Applicants who request inspection service for manufacturing, processing,

packaging or storage facilities, by virtue of their request, agree:

(1) To submit to unannounced inspections of their facilities;

(2) To provide access to all areas of the facilities;

(3) To provide access to interior surfaces of processing equipment compatible with equipment design for inspection of product contact surfaces; and

(4) To provide access to plant quality control records and other records identified in this subpart as pertinent to the inspection.

§ 58.16 Disposition of samples.

Any sample of the product used for inspection or grading may be returned to the applicant if he or she so requests. Such request must be made at the time of the application. The sample will be returned at the applicant's expense. If the applicant makes no such request, the product samples will be destroyed, given to a charitable organization, or disposed of by any other method prescribed by the Administrator.

§ 58.17 Order of service.

Inspection or grading services will be performed in the order in which the applications are received unless efficient management or the availability of qualified inspectors or graders dictates otherwise. Precedence may be given to applications for appeal inspection or grading.

§ 58.18 Inspection or grading stamps, tags, certificates, memoranda or reports.

(a) A shield bearing the words "U.S.D.A. LOT NUMBER" and "OFFICIALLY INSPECTED," and the code identification number of the grader performing the service, as shown in Figure 1, is one form of official identification under the regulations for the inspection and grading of dairy and related products.



(b) A rectangular, serial-numbered tag, on which appears a shield bearing the letters "U.S.D.A." and the words "Product Control," as shown in Figure 2, is another form of official identification under the regulations for inspection and grading of dairy and related products. Official graders, inspectors and supervisors may use such tags or other means as approved by the Branch Chief to identify and control dairy and related products that do not conform with the regulations, or are on hold. Such products shall not be used, moved, or altered in any manner, and the official control identification shall not be removed without the permission of the USDA.

BILLING CODE 3410-02-M

Figure 1

U.S. DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
DAIRY DIVISION



DO NOT REMOVE TAG
OR
USE PRODUCT
WITHOUT AUTHORIZATION

(SEE REVERSE)

NO

PRODUCT TAGGED

NO. OF CONTAINERS

The product(s) or container(s) to which this tag is attached is (are) controlled under authority of the Agricultural Marketing Act and is (are) not to be used moved or altered in any manner without the expressed permission of an authorized representative of the United States Department of Agriculture. The unauthorized removal or alteration of this tag or utilization of the tagged product(s) is a violation of the Agricultural Marketing Act of 1946, as amended and regulations issued thereunder.

REMARKS

AUTHORIZED EMPLOYEE

DATE

PRODUCT CONTROL

LOCATION AND REMARKS

AUTHORIZED EMPLOYEE

DATE

FORM DA-147

Reverse

Figure 2

(c) Inspection or grading certificates and sampling, plant survey, and other memoranda, reports, or worksheets shall be issued on forms approved by the Branch Chief.

§ 58.19 Issuance of inspection or grading certificates and reports.

(a) An inspection or grading certificate for a product which has been inspected or graded shall be issued in accordance with instructions, guidelines and procedures issued by the Branch Chief.

(b) A plant survey or equipment design review report for each inspection or review conducted shall be issued in accordance with instructions, guidelines and procedures issued by the Branch Chief.

(c) The inspector or grader shall sign the official memorandum as defined in § 58.2(b). The official memorandum is used as a basis for preparing and issuing the inspection or grading certificate. The inspection or grading certificate shall be signed by an inspector or grader who participated in the inspection or grading, however, an inspector or grader may give to another person a power of attorney to sign on his or her behalf, with the approval of the Branch Chief. *Provided*, that whenever a certificate is signed by a person other than the inspector or grader, under a power of attorney, the certificate must so indicate. The signature of the person who holds the power of attorney must appear along with the name of the grader or inspector who personally graded or inspected the product.

§ 58.20 Issuance of take-off certificates.

An interested party may request that the information on two or more officially-issued certificates be consolidated, and a new, third certificate issued. The new certificate shall state that it is a "take-off certificate" and shall include the dates and numbers of all the certificates used, in whole or in part, to create the take-off certificate. A "take-off certificate" shall not be issued if composite laboratory analysis samples are no longer representative of the product to be certified.

§ 58.21 Disposition of inspection or grading certificates or reports.

The Dairy Grading Branch shall deliver or mail to the applicant or the applicant's designee, the original and up to four copies of the inspection or grading certificate or report issued pursuant to § 58.19. A copy shall also be filed in the National Field Office. All other copies shall be filed as prescribed by the Branch Chief. Additional copies

of reports or certificates will be supplied as provided in § 58.50.

§ 58.22 Advance information.

All or part of the inspection or grading results contained in a certificate or report may be given out in advance at the request of the applicant and at the applicant's expense.

§ 58.23 Reserve sample for inspection or grading.

Reserve samples may be inspected, graded or analyzed only if the USDA determines that the original samples have been lost, damaged or altered during shipment to the laboratory or are no longer representative of the long-term stored product due to repetitive regrading of the original samples.

Retest Service

§ 58.24 Who may request retest service.

(a) Any interested party may request a retest of any laboratory analysis on inspected or graded commodities. Only one retest is allowed for each original inspection or grading service.

(b) A retest service may be requested for any or all quality factors tested.

(c) The retest shall be limited to analysis of the originally-tested file sample. If such file sample is not available, the request for retest service will be denied.

§ 58.25 How to request retest service.

Any interested party may file an application for retest service with the National Field Director. If the application is verbal, written confirmation may be requested.

§ 58.26 Issuing certificates for retest service results.

(a) Immediately after a retest service has been completed, a certificate shall be issued in accordance with § 58.18 through 58.21 and the applicable instructions, guidelines and procedures. The new certificate shall supersede the original certificate (See § 58.38) and shall clearly state that it is a "Retest Certificate." The retest certificate shall include the results of the retest, the original results of tests that were not retested, shall indicate the factor(s) upon which the retest was based, and shall state that all other factors were part of the original inspection or grading service.

(b) If an original certificate has not been issued at the time of the retest, that original shall be designated as the "Retest Certificate", and shall include the results of the retest, the results from the original testing of analyses that were not retested, shall indicate which factors

are affected by the retest, and shall state that all other factors remain the same.

Appeal of Inspection, Grading or Retest Service

§ 58.27 When an appeal inspection, grading or retest service may be requested.

(a) Any interested party who is not satisfied with the results of the original inspection or grading, may request an appeal inspection, grading or retest service, provided that the identity of the inspected or graded samples or the product has not been lost and the conditions under which the original inspection or grading service was performed have not changed. An application for an appeal inspection, grading, or retest service shall be made within 2 days after the day of the original service or notification of laboratory results. The Branch Chief may approve a late application for an appeal.

(b) Only one appeal inspection or grading service is allowed for each original inspection, grading, or retest service. The scope of the appeal inspection or grading shall be limited to the scope of the original inspection.

(c) An appeal inspection or an appeal of laboratory analysis shall be limited to a review of the sampling procedures used in the original inspection. If it is determined that the sampling procedures used in the original inspection were improper, a new sample(s) shall be obtained and inspected or tested for all factors originally tested.

(d) An appeal grading shall include a review of all grade factors or purchase specifications for all samples reported on the original grading certificate.

§ 58.28 How to request an appeal inspection, grading or retest service.

Any interested party may request an appeal inspection, grading or retest service by filing a request with the Branch Chief or the National Field Director. The application for appeal inspection, grading or retest service shall set forth the reasons for the appeal and shall include a copy of the original grading certificate or report, or any other information which the applicant may have regarding the product or the service upon which the appeal is based. If the request is verbal, written confirmation may be required.

§ 58.29 Record of filing date.

The date when each application for appeal inspection, grading or retest service is received shall be recorded and maintained in such manner as the Branch Chief may prescribe.

§ 58.30 When an application for appeal inspection, grading or retest service may be refused.

(a) The Branch Chief may refuse an application for an appeal inspection, grading or retest service if:

(1) The quality or condition of the product has undergone a material change since the original inspection or grading service.

(2) The products that were originally inspected, graded or retested are not available or accessible for reinspection or regrading.

(3) The conditions under which the original inspection or grading service was performed have changed.

(4) The reasons for an appeal of inspection or grading are frivolous or not substantial.

(5) The sampling procedures used during the inspection or retest service being appealed are determined to have been properly followed in the original inspection.

(6) The product is found to be contaminated with filth, decomposed material, foreign material, or offensive substances, or is found to be adulterated.

(7) The applicant has not complied with the act or this subpart.

(b) The Branch Chief or National Field Director shall promptly notify the applicant of the reason for such refusal. If the notification is verbal, written confirmation may be provided.

§ 58.31 When an application for an appeal inspection, grading or retest service may be withdrawn.

The applicant may withdraw his application for appeal inspection, grading or retest service at any time before the appeal inspection or grading is performed. The applicant is responsible for all expenses incurred by AMS in connection with such withdrawn application.

§ 58.32 Order in which appeal inspections, gradings and retest service are performed.

Appeal inspections, gradings or retest service shall be performed in the order in which the applications are received, unless efficient management or the availability of qualified inspectors or graders dictates otherwise. Appeal applications may be given precedence over all other applications pursuant to § 58.17.

§ 58.33 Who shall conduct appeal inspections, gradings or retest service.

An appeal inspection, grading or retest service of a product shall be conducted by any inspector or grader designated for this purpose by the Branch Chief or National Field Director and, whenever practical, the appeal

inspection or grading may be conducted jointly by two such inspectors or graders. The inspector or grader who conducted the original inspection or grading shall not be present during the appeal inspection, grading or retest service.

§ 58.34 Appeal inspection, grading or retest service certificate or report.

(a) Immediately after an appeal inspection, grading or retest service has been completed, a certificate or report shall be issued in accordance with § 58.18 through 58.21 and the applicable instructions, guidelines and procedures. The certificate or report shall supersede the original certificate or report (See § 58.38). It shall clearly state it is an "Appeal Certificate" and will be deemed effective as of the date of the original certificate or report. The appeal certificate or report shall include the number and the date of the superseded certificate or report.

(b) If the original certificate has not yet been issued, it shall be designated as the appeal certificate. It shall clearly state that it is an "Appeal Certificate" and shall include the results of the factor(s) appealed.

Reinspection or Regrading

§ 58.35 Application for reinspection or regrading.

Any interested party may at any time apply for reinspection or regrading of any previously inspected or graded product. An application for reinspection or regrading shall not be considered an application for retest service § 58.24 through 58.26) or application for appeal inspection, grading or retest service (§ 58.27 through 58.34).

§ 58.36 Inspection of reworked or reconditioned lots.

Any interested party may at any time file an application for inspection or regrading of a reworked or reconditioned lot of a product that failed an earlier inspection. The provisions of this subpart on inspection or grading service shall also apply to the inspection of reworked or reconditioned lots, except that the sampling and testing amount will be twice that used in an original inspection or grading, unless otherwise specified by the U.S. Standards for the Condition of Food Containers. It is the applicant's responsibility to clearly identify lots offered for inspection and grading as reworked or reconditioned lots.

§ 58.37 Reinspection or regrading certificate.

(a) Immediately after a reinspection or regrading has been completed, a new

certificate shall be issued in accordance with § 58.18 through 58.21 and the applicable instructions, guidelines and procedures. A certificate issued pursuant to this section shall supersede the inspection or grading certificate previously issued (See § 58.38). Each such certificate shall clearly state it is a "Reinspection Certificate", or "Regrade Certificate" and shall include the number and date of the original certificate.

(b) If the original certificate has not been issued, it shall be designated as the reinspection or regrading certificate. It shall clearly state it is a "Reinspection Certificate" or "Regrade Certificate", and include the results of such reinspection or regrading and a statement that the reinspection or regrade certificate was issued in lieu of the original certificate.

Superseded Certificates

§ 58.38 Superseded certificates.

(a) When any inspection, grading or retest service certificate is superseded in accordance with this subpart, that certificate becomes null and void and no longer represents the class, grade, quality, quantity, or condition of the product it describes.

(b) If all copies of the superseded certificate are in the custody of the Dairy Grading Branch, each copy shall be marked "VOID." If all copies of the superseded certificate are not in the custody of the branch at the time a new one is issued, the new certificate shall include a statement that the original certificate has not been surrendered.

Granting Authority to Inspectors or Graders to Perform Official Duties

§ 58.39 Who may be authorized to perform official duties.

AMS may authorize any qualified federal or cooperating state employee (as so determined in a competency review by the Branch Chief) to perform specified inspection or grading services. A license issued and signed by the Branch Chief or his or her designee shall be evidence of such authorization.

§ 58.40 Duration of license validation.

A license is valid for a period of time determined by the Branch Chief as appropriate for inspection and grading needs, but in no case shall any such license be valid for more than four years.

§ 58.41 License renewal.

A license may be renewed in accordance with the provisions of this subpart and as prescribed by the Branch Chief.

§ 58.42 Suspension or revocation of license.

The Branch Chief may suspend any license issued under the regulations in this subpart by giving notice of the suspension and a statement of reasons to the employee involved. The employee may then file an appeal in writing with the Branch Chief within 10 days after receiving the notice of suspension, and shall, upon request, be granted an oral hearing. The Branch Chief shall then take such action as the appeal may warrant. If no appeal has been filed with the 10-day period, the license will be suspended or revoked.

§ 58.43 Surrender of license.

An employee whose license is suspended or revoked, or whose services are terminated, must immediately surrender the license to his or her supervisor.

§ 58.44 Identification.

The licensee shall carry his or her license when performing any function under the regulations in this subpart and shall use the license for his or her identification.

§ 58.45 Financial interest of licensees.

The licensee shall not render any inspection or grading services on any product or at any facility in which he or she has a financial interest.

Fees and Charges**§ 58.46 Payment of fees and charges for inspection and grading services.**

(a) The applicant must pay in full all fees and charges for any service (whether the request was withdrawn, cancelled, postponed, denied or completed), in accordance with the applicable provisions of this section and § 58.47 through 58.55. The Dairy Grading Branch may require prepayment of such fees and charges.

(b) Fees and charges for any inspection or grading service performed by any inspector or grader shall be paid by check, draft or money order payable to the USDA and remitted promptly to the office indicated on the bill for such inspection or grading service.

§ 58.47 Fees for holidays or other non-regular workdays.

If an applicant requests that inspection or grading service be performed on a holiday, Saturday or Sunday, or outside the established tour of duty hours, the applicant shall be charged 1½ times the rate of service performed during normal working hours.

§ 58.48 Fee for retest service.

The fees for any retest service shall be the same as provided in §§ 58.51 and

58.52. In addition, the applicant will be charged for the additional laboratory analysis or resident laboratory time necessary to conduct the retest service, and for the preparation of the new certificate; provided, however, that the applicant has already paid or been billed for the original inspection. If not, then the retest service certificate shall reflect the charges for both the original inspection and the retest service.

§ 58.49 Fees for appeal inspection, or grading.

The fees to be charged for any appeal inspection, grading or retest service are the same as the fees specified in sections 58.51 and 58.52.

§ 58.50 Fees for additional copies of certificates or inspector reports.

Additional copies of any inspection or grading certificates, including take-off certificates (§ 58.20), or inspection reports other than those provided for in § 58.21, will be supplied to any interested party for a fee based on the time required to prepare such copies as specified in § 58.52.

§ 58.51 Travel expenses and other charges.

The applicant shall be charged for the cost of travel and other expenses incurred by AMS in connection with the performance of inspection or grading services.

§ 58.52 Fees for inspection, grading, and sampling.

Except as otherwise provided in § 58.46 through 58.55, an hourly rate of \$44.60 shall be charged for any inspection, grading, and sampling service performed between 6 a.m. and 6 p.m., and \$49.00 for service performed between 6 p.m. and 6 a.m. The time shall be calculated to the nearest 15-minute period and shall include time spent preparing certificates and reports and travel time in connection with the performance of the service. There will be a minimum half-hour charge for each request.

§ 58.53 Fees for conformance and monitoring samples.

Fees and charges associated with the collection and testing of samples for determining compliance with regulations, and the monitoring of inspection and grading programs and procedures shall be paid by the applicant in accordance with the applicable provisions of § 58.47 through 58.55.

§ 58.54 Fees for continuous resident service.

In addition to any fees and charges pursuant to §§ 58.47 and 58.53 fees for an inspector or grader in a continuous resident program shall be \$39.60 an hour for services performed during the assigned tour of duty. Charges for service performed outside of the assigned tours of duty shall be 1½ times the hourly rate stated in this section.

§ 58.55 Reimbursement for service performed under cooperative agreement.

The reimbursement for services performed under a cooperative agreement shall be as provided in such agreement.

Marking, Branding, and Identifying Product**§ 58.56 Authority to use official identification.**

(a) Federal employees and licensed cooperating State employees are granted the sole authority by the Branch Chief to affix official identifying marks, stamps or brand on commodities presented for official inspection or grading, except as provided in paragraph (c) of this section.

(b) Federal employees and licensed cooperating State employees shall be responsible for the storage, care and protection from abuse or unauthorized use of all accountable items, (e.g., grading stamps, evidence tape, grip lock seals, random seed numbers, etc.) in their care, in accordance with this subpart and the applicable instructions, guidelines and procedures.

(c) The Branch Chief may authorize any person to use an official grade label or quality identification on a product package if the product is inspected or graded pursuant to this subpart.

§ 58.57 Forms or types of official identification.

Forms or types of official identification used in connection with official inspection or grading services include, without limitation, "Officially Inspected" stamps, product control tags, "USDA DAIRY OFFICIAL SAMPLES" evidence tape, USDA-supplied keys, lock boxes, certificates, and random sample number generator seed numbers.

§ 58.58 Approval and form of official grade label or quality identification.

(a) Any package label or packaging material that bears any official grade level or quality identification shall only be used as prescribed by the Branch Chief, and such official grade label or quality identification shall be in a form or of a type and contain only that information authorized by the Branch Chief. A label or packaging material

with the official identification shall not be used without prior approval by the Branch Chief.

(b) An official inspection or grade mark label approved for use on packages of inspected or graded dairy products shall appear in a shield with a form and design shown in Figures 3, 4, 5, 6 and 7. Other forms, designs or wording

may be used with the approval of the Branch Chief.

The official grade labels or quality identification shown in Figures 3, 4 and 5 are designed to be used on graded products that are packed under USDA inspection. The grade label in Figure 6 is designed for graded products that are processed and packed under USDA

inspection. The grade label in Figure 7 is designed for inspected products (for which U.S. standards for grades are not established) that are processed and packed under USDA quality control service.

BILLING CODE 3410-02-M



Figure 3



Figure 4



Figure 5



Figure 6



Figure 7

(c) The official grade label or quality identification shall be printed on the package label or on a nonremovable adhesive label. It shall be printed or applied on a main panel of the following:

(1) The primary wrapper or covering of the product, including without limitation parchment, waxed or foil paper and cover laminates for thermoformed cups, plastic films or cup-and-lid units; and

(2) The carton, overwrap or sleeve that is placed over one or more primary wrappers to create a unit intended for retail sale.

(d) The official grade level or quality identification may be printed or applied on shipping cases if all packaging materials within the cases also bear an official grade label or quality identification.

(e) The shield identification shall be as large as possible on 1-pound or larger cartons or wrappers, but in no case shall be smaller than the $\frac{3}{4}$ inch by $\frac{3}{4}$ inch in size. The Branch Chief may consider the use of a smaller-size shield on special smaller packages. The shield, however, must be identifiable and legible.

(f) An official grade label under this subpart shall be used only for U.S. Grade B or higher or U.S. Standard Grade or higher. An official "Quality Approved" label under this subpart shall be used only for products for which there are no U.S. grade standards.

(g) an applicant shall submit to the Branch Chief of the Dairy Grading Branch, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Washington, DC 20090-6456, a sketch, proof or photocopy of the proposed label or packaging material with the official grade label or quality identification for review and tentative approval before the applicant orders a supply of material.

(h) The firm that is to package the product shall provide to the Branch Chief three copies of the printed labels and packaging materials bearing official grade label or quality identification for final approval.

(i) Printed labels and packaging materials bearing an official grade label or quality identification that have received final approval may not be moved to and from packaging firms without prior notice to and approval of the Dairy Grading Branch. Such notice and approval may be verbal or written. If verbal, written confirmation may be required.

§ 58.59 Information required on official grade label or quality identification

Each official grade level or quality identification shall clearly indicate the U.S. grade of the product or any other such terminology as may be approved by the Branch Chief, and shall also include the phrase, "Officially Graded," or "Officially Inspected" where appropriate. When the Branch Chief so requires, the package label, carton, or wrapper bearing official identification shall be stamped or perforated with at least the last six digits of the certificate number.

§ 58.60 Time limit for packaging inspected or graded products with official grade label or quality identification.

Any lot of butter that is graded and intended for packaging with the official grade label identification shall be packaged within 10 days of the date of grading. Any lot of natural cheese or dry milk shall be packaged within 30 days of the date of grading. In both cases, the product shall be properly stored during the 10-day or 30-day period. The time requirement for packaging other inspected or graded products shall be as set by the Branch Chief.

§ 58.61 Applicant responsibilities for packaging products with official grade label or quality identification.

(a) Each applicant who receives approval to package a product with an official grade label or quality identification must ensure that only products that were produced in a plant approved by the Dairy Grading Branch are packaged with such approved labels.

(b) Each applicant approved to package a product with an official grade label or quality identification shall maintain control over such products until the official grade has been established. Products packaged in such approved labels shall not be distributed from the direct control of the applicant.

(c) The applicant is responsible for preventing the distribution of products bearing the official grade label or quality identification that do not meet the criteria of the declared official grade.

§ 58.62 Keeping quality samples.

(a) Samples to determine if a product possesses satisfactory keeping quality shall be taken if:

- (1) Required by the Branch Chief,
- (2) Requested by an applicant,
- (3) An applicant has been granted authority to package the product with an official grade label or quality identification, or
- (4) The products offered for grading are covered by a purchase specification requiring a keeping quality test.

(b) Keeping-quality samples of the product offered for grading may be taken from:

(1) The lot of product that has been submitted for inspection or grading and packaged with an official identification,

(2) Any lot of product submitted for inspection or grading for which an interested party or a purchase specification requires the performance of a keeping-quality test.

(c) The applicant shall maintain suitable equipment for the incubation of product samples for keeping-quality testing. Such equipment includes a keeping-quality cabinet that has a lock and contains a minimum seven-day temperature recording device that is battery or spring-activated.

(d) Issuance of the inspection or grading certificate may be withheld pending completion of the keeping quality tests.

§ 58.63 Product not eligible for packaging with official identification.

(a) When a lot of inspected or graded product shows unsatisfactory keeping quality, other lots from the same manufacturing plant may not be used for packaging with official grade or quality identification unless:

(1) The keeping quality of each churning is determined to be satisfactory in accordance with provisions of this subpart; and

(2) The manufacturing plant submits, as soon as practicable, to an official inspection to determine and correct all potential causes for the unsatisfactory keeping quality.

(b) Any product from a manufacturing or processing plant that has not been surveyed and approved for inspection or grading service may not carry the official grade label or quality identification.

Violations

§ 58.64 Debarment of service.

The Administrator may debar any person, including any agents, officers, subsidiaries, or affiliates of such person, from any or all benefits of the Act for a specified period. The rule of practice governing withdrawal of inspection and grading services in formal adjudicatory proceedings instituted by the Secretary (7 CFR part 1, subpart H) shall be applicable to such debarment action. Commission of any of the following acts may constitute cause for debarment:

(a) *Fraud or misrepresentation.* Any willful misrepresentation or deceptive or fraudulent practice or act committed by any person in connection with:

(1) Filing any application for any inspection or grading service, appeal reinspection, or regrading service;

(2) Making a product accessible for inspection or grading service;

(3) Making, issuing, manufacturing, selling, distributing or using any inspection or grading certificate issued pursuant to the regulations in this subpart;

(4) Using any official stamp, evidence tape, USDA-supplied keys, lock boxes, random number generator for seed numbers, label or identifications;

(5) Removing, tampering with or manipulating products labeled with evidence tape or product control tags or removing or tampering with the tape or tag itself;

(6) Using terms like "United States," "U.S.," "Officially Graded," "Officially Inspected," "USDA Approved," "USDA Approved plant" or "Government graded" or similar terms to label or advertise any product without the official U.S. grade of the product; or

(7) Using any of the aforesaid terms or an official stamp, label, or identification to label or advertise any product that has not been inspected or graded or that has failed to meet the criteria of the grade designation.

(b) *Use of facsimile form.* The attempted or actual use of any unofficial or unauthorized form of identification as an official identification under this section, or the unauthorized use of a facsimile form as an official inspection or grading certificate or report, stamp, label, or other official inspection mark.

(c) *Mislabeling.* The use of any word, numeral, letter, or facsimile to assign a grade to a product that does not conform to or has not been officially inspected or graded according to, any recognized U.S. standard.

(d) *Willful violation of the regulations in this subpart.* Any willful violation of the provisions in this subpart or the Act, or the instructions or specifications issued thereunder.

(e) *Interfering with an inspector or grader.* Any interference or obstruction, attempted or otherwise, of any inspector or grader in the performance of his or her duties, such as intimidation, threat, bribery, or assault.

(f) *Willful failure to respond to follow-up requests to test for potentially health-threatening contaminations.* The willful failure to respond to USDA requests to, e.g., identify product, remove product from distribution, present product for follow-up testing, or monitor the disposal of contaminated product, which failure would inhibit or prevent the USDA's performance under any memorandum of understanding with

the Food and Drug Administration or any other federal agency.

Miscellaneous

§ 58.65 Employee conduct and responsibilities.

All inspectors, graders, and cooperating State employees shall conduct their activities in a professional and courteous fashion so as to present a favorable impression of the service, agency and Department. Employee activities shall be consistent with the provisions of this subpart and all applicable instructions, guidelines and procedures issued or approved by the Branch Chief.

§ 58.66 Nondiscrimination.

The conduct of all services and the licensing of inspection, grading, or sampling personnel under these regulations shall be accomplished without discrimination as to age, race, marital status, color, religion, sex, or national origin.

§ 58.67 Political activity.

All inspectors or graders are forbidden during the period of their respective appointments or licenses to take an active part in political management or in political campaigns. Political activities in city, county, State, or national elections, whether primary or regular, or on behalf of any party or candidate, or any measure to be voted upon, is prohibited. This applies to all appointees including without limitation temporary and cooperative employees and employees on leave of absence with or without pay. Willful violation of this section will constitute grounds for dismissal in the case of appointees and revocation of licenses in the case of licensees.

§ 58.68 Report of violations.

All inspectors, graders and cooperating State employees shall report, in the manner prescribed by the Branch Chief, any violation or failures to comply with the Act and this subpart.

§ 58.69 Other applicable regulations.

Compliance with the provisions of this subpart shall not excuse a failure to comply with any other Federal, State, or municipal laws or regulations.

§ 58.70 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

The following control number has been assigned to the information collection requirements in 7 CFR part 58, subpart A, by the office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Public Law 96-511.

7 CFR section where requirements are described	Current OMB control No.
58.8(a)(b).....	0581-0126
58.9(a)(b).....	0581-0126
58.13.....	0581-0126
58.24.....	0581-0126
58.28.....	0581-0126
58.35.....	0581-0126
58.56.....	0581-0126
58.58(g)(h).....	0581-0126
58.59.....	0581-0126

Signed at Washington, DC, on July 20, 1992.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 92-17538 Filed 8-7-92; 8:45 am]

BILLING CODE 3410-02-M

Food Safety and Inspection Service

9 CFR Part 318

[Docket No. 87-027P]

RIN 0538-AA79

Use of Sorbitol in Cured Pork Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to amend the Federal meat inspection regulations to expand the list of products in which sorbitol is permitted to include cured pork products, such as Canadian style bacon and smoked pork shoulder picnic roll. This action is in response to a petition from Quality Sausage Company, Inc., to allow the use of up to 2 percent sorbitol in such meat food products to flavor, to reduce caramelization and charring of such products when they are used in other products subject to severe heat treatment, and to facilitate removal of casings from the product. In addition, the Agency is proposing to remove a prohibition against the use of sorbitol in combination with corn syrup and/or corn syrup solids. This action is based on the current availability of reliable laboratory procedures to measure the amount of sorbitol present in such combinations, so that the prohibition is no longer needed.

DATES: Comments must be received on or before October 9, 1992.

ADDRESSES: Written comments to: Policy Office, Attn: Linda Carey, FSIS Hearing Clerk, room 3171, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. (See

also "Comments" under
"SUPPLEMENTARY INFORMATION.")

FOR FURTHER INFORMATION CONTACT:
Charles R. Edwards, Director, Product
Assessment Division, Regulatory
Programs, Food Safety and Inspection
Service, U.S. Department of Agriculture,
Washington, DC 20250, Area Code (202)
205-0080.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Administrator has determined that this proposed rule is not a "major rule" within the scope of Executive Order 12291. It will not result in (1) an annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) a significant adverse effect on competition, employment, investment, productivity, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. States and local jurisdictions are preempted under the Federal Meat Inspection Act (FMIA) from imposing any marking, labeling, packaging, or ingredient requirements on federally inspected meat products that are in addition to, or different than those imposed under the FMIA. States and local jurisdictions may, however, exercise concurrent jurisdiction over meat products that are outside official establishments for the purpose of preventing the distribution of meat products that are misbranded or adulterated under the FMIA, or, in the case of imported articles, which are not at such an establishment, after their entry into the United States. Under the FMIA, States that maintain meat inspection programs must impose requirements on State inspected products and establishments that are at least equal to those required under the FMIA. These States may, however, impose more stringent requirements on such State inspected products and establishments.

This rule is not intended to have retroactive effect. There are no applicable administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule. However, the administrative procedures specified in 9 CFR 306.5 must be exhausted prior to any judicial challenge of the application of the provisions of this rule.

Effect on Small Entities

The Administrator, FSIS, has made an initial determination that this proposed rule will not have a significant economic impact on a substantial number of small entities. This proposal would permit the use of sorbitol in cured pork products to flavor, to facilitate removal of casings from such products, and to reduce caramelization and charring of such products. The proposal would also permit the use of sorbitol in combination with corn syrup and/or corn syrup solids. Manufacturers, both large and small, opting to use sorbitol in cured pork products or in combination with corn syrup and/or corn syrup solids would be required to revise the ingredient statement on product labels to show the presence of the sorbitol. The average cost of a modified label is approximately \$1,000. Of this amount, only about \$150 is incurred for administrative costs in preparing and submitting the label application form to FSIS. This administrative cost would not impact significantly upon small entities and is covered under existing approved paperwork burdens of FSIS's prior label approval process.

The use of sorbitol may increase product marketability by improving the flavor and aesthetic qualities of the products in which it is used. Decisions by individual manufacturers on whether to use sorbitol in cured pork products or in combination with corn syrup and/or syrup solids would be based on their conclusions that the benefits would outweigh any costs of including these substances in their formulations.

Comments

Interested persons are invited to submit written comments concerning this proposal. Written comments should be sent to the Policy Office and should refer to Docket Number 87-027P. All comments submitted in response to this action will be available for public inspection in the Policy Office from 9 a.m. to 12:30 p.m. and from 1:30 p.m. to 4 p.m., Monday through Friday.

Background

Quality Sausage Petition

FSIS has been petitioned by the Quality Sausage Company, Inc., Dallas, Texas, to approve the use of sorbitol in meat and meat food products other than cooked sausage labeled frankfurter, frank, furter, wiener, and knockwurst in the same amount currently approved for those products. Meat food products for which use of sorbitol is petitioned include those that (1) contain sugar or a sweetener as a common component, and (2) are subjected to a severe heat

treatment either during manufacture or prior to consumption by the consumer. Examples of such products are two cured pork products commonly used in pizza toppings that char when cooked at high temperature—Canadian style bacon and smoked pork shoulder picnic roll.

The petitioner is requesting a regulatory change that would allow use of sorbitol in meat food products commonly used as pizza toppings, based on the fact that the fast food industry now finds it advantageous to use ovens that cook at high temperatures. Such ovens often char meat toppings cured with sugars or sweeteners other than sorbitol. This is objectionable to the industry and to consumers. The petitioner's data show that the use of sorbitol as a flavoring agent and protector in meat food products commonly used as pizza toppings reduces caramelization and charring of pizza toppings.

Current Regulations

Sorbitol is currently listed in 9 CFR 318.7(c)(4) for use in cooked sausages labeled frankfurter, frank, furter, wiener, and knockwurst to flavor, to facilitate the removal of casings from product, and to reduce caramelization and charring. Such use is permitted at levels not to exceed 2 percent of the weight of the formula, excluding the formula weight of water or ice. Further, the use of sorbitol is prohibited in combination with corn syrup and/or corn syrup solids (9 CFR 318.7(c)(4)).

Sorbitol is listed in 21 CFR 184.1835 as a substance generally recognized as safe (GRAS) as an anti-caking agent, flavoring agent, and various other uses when used in accordance with good manufacturing practices. In a November 5, 1987, opinion letter, the Food and Drug Administration (FDA) advised the Agency that the proposed sorbitol use conditions and permitted level would not conflict with FDA regulations.¹

The Proposal

After a review of the information and data provided by the petitioner, the Administrator believes that (1) the proposed use of sorbitol would be in compliance with applicable FDA requirements, (2) its use would be functional and suitable for the products intended, (3) the substance would be used at the lowest level necessary to accomplish its intended technical effect, and (4) the use of this substance in products would not render them

¹ A copy of FDA's letter is available, without charge, from the FSIS Hearing Clerk.

adulterated, misbranded, or otherwise not in accordance with the requirements of the Federal Meat Inspection Act.

FSIS has noted that certain cured pork products commonly used for pizza toppings that contain sugar and/or corn syrup may char under conditions of severe heat. These products include various preparations of hams, shoulders, picnics, butts, and loins, such as Canadian style bacon and smoked pork shoulder picnic roll.

Therefore, FSIS is proposing to allow the use of sorbitol in cured pork products (9 CFR 319.104) at a level not to exceed 2 percent of the formula weight, excluding the weight of water or ice, to flavor, to facilitate the removal of casings from product, and to reduce caramelization and charring, when used in accordance with 21 CFR 184.1835. Although the petitioner's primary request was to use sorbitol to reduce charring of meat products used as pizza toppings, the data submitted by the petitioner also support the proposed use

of sorbitol in cured pork products for flavoring and for facilitating removal of casings from products, as currently allowed for various other meat products.

In addition, FSIS is proposing to permit the use of sorbitol in combination with corn syrup and/or corn syrup solids. When current uses for sorbitol were promulgated in the regulations in 1972, the Agency prohibited the use of sorbitol in combination with corn syrup and/or corn syrup solids because there were no effective laboratory procedures at that time to measure the amount of sorbitol present when used in combination with corn syrup. Effective laboratory procedures are now available for determining the individual quantity of sorbitol, corn syrup, and corn syrup solids. Therefore, 9 CFR 318.7(c)(4) would be amended to delete the prohibition of combining these substances.

List of Subjects in 9 CFR Part 318

Food additives, Meat inspections.

For the reasons discussed in the preamble, FSIS is proposing to amend 9 CFR part 318 of the Federal meat inspection regulations to read as follows:

PART 318—ENTRY INTO OFFICIAL ESTABLISHMENTS; REINSPECTION AND PREPARATION OF PRODUCTS

1. The authority citation for part 318 would continue to read as follows:

Authority: 7 U.S.C. 450, 1901-1906; 21 U.S.C. 601-695; 7 CFR 2.17, 2.55.

2. In the chart in § 318.7(c)(4) under the Class of substance "Flavoring agents; protectors and developers," the substance "Sorbitol" would be revised to read as follows:

§ 318.7 Approval of substances for use in the preparation of products.

(c) * * *

(4) * * *

Class of substance	Substance	Purpose	Products	Amount
Flavoring agents; protectors and developers	Sorbitol	To flavor, to facilitate the removal of casings from product, and to reduce caramelization and charring.	Cooked sausage labeled frankfurter, frank, furter, wiener, and knockwurst; cured pork products, as provided in Part 319 of this subchapter.	Not to exceed 2 percent of the formula weight of water or ice, when used in accordance with 21 CFR 184.1835.

Done at Washington, DC, on: July 15, 1992.
H. Russell Cross,
Food Safety and Inspection Service.
[FR Doc. 92-18894 Filed 8-7-92; 8:45 am]
BILLING CODE 3410-DM-M

Corporation (FDIC); Office of the Comptroller of the Currency (OCC), Treasury; and Board of Governors of the Federal Reserve System (Board).
ACTION: Joint advance notice of proposed rulemaking.

SUMMARY: The FDIC, the OCC, and the Board (the Banking Agencies) solicit comments on a proposed framework for revising their risk-based capital guidelines to take adequate account of interest rate risk. The Banking Agencies are also soliciting comments on how their risk-based capital guidelines may be revised to take account of concentration of credit risk and the risks of nontraditional activities. These revisions are required by section 305 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA).

DATES: Comments must be received on or before October 9, 1992.

ADDRESSES: Commenters may respond to any or all of the Banking Agencies. All comments will be shared among all the Banking Agencies.

FDIC: Hoyle L. Robinson, Executive Secretary, Attention: Room F-400, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand-delivered to room F-400, 1776 F Street NW., Washington, DC, on business days between 8:30 a.m. and 5 p.m. [FAX number (202) 898-3838]. Comments will be available for inspection and photocopying in room F-400 between 8:30 a.m. and 5 p.m. on business days.

OCC: Written comments should be submitted to Docket No. 92-13, Communications Division, Ninth Floor, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219. Attention: Karen Carter. Comments will be available for inspection and photocopying at that address.

Board of Governors: Comments, which should refer to Docket No. R-0764, may be mailed to Mr. William Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, NW., Washington, DC 20551. Comments addressed to Mr.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket No. 92-13]

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 AND 225

[Docket No. R-0764]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

RIN 3064-AA15

Risk-Based Capital Standards

AGENCIES: Federal Deposit Insurance

Wiles may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. and to the security control room outside of those hours. Both the mail room and control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in room B-1122 between 9 a.m. and 5 p.m., except as provided in § 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8.

FOR FURTHER INFORMATION CONTACT:

FDIC: For issues relating to interest rate risk, William A. Stark, Assistant Director (202/898-6972) or Susan Dingilian, Capital Markets Specialist (202/898-7327), Division of Supervision; for issues relating to concentration of credit risk and the risks of nontraditional activities, Daniel M. Gautsch, Examination Specialist (202/898-6912), Division of Supervision; For legal issues, Claude A. Rollin, Counsel (202/898-3985), Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OCC: Christina Benson, Capital Markets Specialists (202/874-5070) or Kurt Wilhelm, National Bank Examiner (202/874-5070), Office of the Chief National Bank Examiner; Kevin Jacques, Financial Economist, Economic and Regulatory Policy Analysis (202/874-5220), and Ronald Shimabukuro, Senior Attorney, Legal Advisory Services Division (202/874-5330), Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board of Governors: James V. Hout, Assistant Director (202/452-3358), James Embersit, Supervisory Financial Analyst (202/452-5249), Division of Banking Supervision and Regulation; Scott G. Alvarez, Associate General Counsel (202/452-3583), Gregory A. Baer, Senior Attorney (202/452-3236), Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

I. Background and Introduction

Section 305 of the Federal Deposit Insurance Corporation Improvement Act (FDICIA), Public Law 102-242, requires the federal banking agencies to revise their risk-based capital guidelines to

ensure that those standards take adequate account of (1) interest rate risk, (2) concentration of credit risk, and (3) the risks of nontraditional activities. See, 12 U.S.C. 1828 note. The agencies must publish final regulations implementing section 305 by June 19, 1993, and establish reasonable transition rules to facilitate compliance with those regulations.

The Banking Agencies are issuing this advance notice of proposed rulemaking to seek public comment that will enable them to develop a proposed rule. The Banking Agencies solicit comments on all aspects of a proposed method for incorporating an interest rate risk (IRR) component into the current risk-based capital guidelines for banking institutions and, more generally, on ways that they may revise their risk-based capital guidelines to account for the risks created by concentration of credit and nontraditional activities. The Banking Agencies also request comment on any or all of the specific numbered questions presented below, though commenters may address any aspect of the proposal and need not confine their remarks to the numbered questions.

A. Proposal on Interest Rate Risk

Interest rate risk is the risk that changes in market interest rates might adversely affect a bank's financial condition. As financial intermediaries, banks and other depository institutions accept interest rate risk as a normal part of their business. They assume this risk whenever the interest rate sensitivity of their assets does not match the sensitivity of their liabilities or off-balance-sheet positions.

While mismatched positions often permit institutions to profit from favorable changes in interest rates, they also expose a bank's earnings and capital to potential losses. For a bank with more interest-sensitive liabilities than assets, a rise in interest rates can reduce net interest income by increasing the institution's cost of funds relative to its yield on assets. Conversely, a bank with assets that reprice faster than liabilities may experience a decline in net interest income if interest rates decline.

Changes in interest rates may affect not only an institution's current earnings but also its future earnings and the economic value of its capital. These effects are reflected in changes in the present value of an institution's

financial instruments. For the bank with liabilities repricing faster than assets, the present value of its assets will decline by more than the present value of its liabilities should interest rates rise. Hence, the economic value of its capital will decline if rates increase.

An objective of the IRR framework described herein is to ensure that banks with high levels of IRR have sufficient capital to cover their exposure. IRR exposures would be quantified using a measurement system that weights an institution's assets, liabilities and off-balance sheet positions by risk factors that approximate each instrument's price sensitivity to changes in interest rates. The net amount of these weighted values, the "Net Risk-Weighted Position," would serve as the basis for measuring an institution's IRR exposure for capital adequacy purposes.

Under the proposal, institutions with IRR exposures in excess of some "threshold" level of IRR would be required to hold capital proportional to that excess risk. A supervisory decision regarding what constitutes an acceptable absolute level of measured IRR exposure would be used in conjunction with an industry distribution of measured exposures to specify the threshold level.

The proposed measurement system is designed to minimize reporting burdens while meeting regulatory needs. In view of the number of simplifying assumptions the system employs, the Banking Agencies do not intend for it to replace other, more sophisticated procedures that banks may use in their asset and liability management process.

B. Issues Concerning the Risks of Concentration of Credit and Nontraditional Activities

The Banking Agencies are not presenting a proposal for revising current risk-based capital guidelines to account for concentration of credit risk and the risks of nontraditional activities. Before proceeding with a proposal for these two risks, the Banking Agencies are seeking guidance on how these risks should be defined and on the factors that should be considered when incorporating these risks into capital guidelines. These comments will be considered in proposing any changes to the risk-based capital guidelines.

C. Relationship of Section 305 to the Basle Accord

Section 305 reflects an awareness by Congress that capital standards are an

international issue. Section 305(b)(2) requires the federal banking agencies to discuss the development of comparable standards with members of the supervisory committee of the Bank for International Settlements. In implementing section 305, the Banking Agencies seek to create a workable system for measuring the risks identified by section 305, while at the same time continuing to work with international organizations to develop consistent capital standards.

The three distinctive types of risk addressed by section 305 of FDICIA are not explicitly incorporated in the Basle Accord on risk-based capital that was implemented by the three federal banking agencies in 1989.¹ The Basle Accord tailors a bank's minimum capital requirement to broad categories of credit risk embodied in its assets of off-balance-sheet instruments. Overall, the Basle Accord requires banks to have total capital equal to at least 8 percent of their risk-weighted assets by the end of 1992.² Banks with high or inordinate levels of risk are expected to operate well above minimum capital standards.

The Basle Accord makes a bank's minimum capital requirements sensitive to the risk of its assets and off-balance-sheet positions. The Basle Accord, however, focuses primarily on credit risk. It does not impose explicit capital charges tied to other factors that can affect a bank's financial condition, including interest rate risk.

With current risk-based capital guidelines based primarily on credit risk, institutions may have an incentive to substitute interest rate risk for credit risk in structuring their balance sheets. Recognizing this possibility, the Basle Committee on Bank Supervision, under

the aegis of the Bank for International Settlements (BIS), has been working to address the treatment of interest rate risk.

The Banking Agencies are actively participating in that international effort. However, several factors suggest the need for developing a separate "domestic" approach for addressing interest rate risk. One consideration is that the time frame involved in developing and implementing an international standard is, as yet, uncertain. Accordingly, an international standard would, most likely, not be available to meet the deadline of June 19, 1993 specified in section 305 of FDICIA. Moreover, an international standard that is designed for a myriad of financial instruments, often present at only the largest and most internationally active banks, may be needlessly complex for many of the nearly 12,000 small and medium-size U.S. banks. Finally, once an international framework emerges for the assessment of interest rate risk, every country may need to tailor it to the specific characteristics and structure of its own banking system.

In view of these considerations, and pursuant to section 305 of FDICIA, the Banking Agencies will be proposing a system for incorporating an interest rate risk component into the current risk-based capital guidelines. The objective of this proposal is to make a bank's capital requirement responsive to significant levels of IRR. The proposal is designed to ensure that banks with high levels of IRR have capital commensurate with that risk, thereby reducing the exposure of the federal depository institution insurance funds. The proposed approach uses a measure of interest rate risk that is consistent with—although not identical to—that being pursued internationally. As such, the measure should be adaptable to any international agreement that may emerge.

II. Interest Rate Risk—General Framework of Proposal

An underlying principle of the proposal for incorporating IRR into the risk-based capital guidelines is that a certain amount of IRR is inherent and appropriate in commercial banking. In addition, the proposal acknowledges that the level of IRR in banks is difficult to measure with a high degree of confidence. Finally, the approach takes into consideration the fact that, to date, IRR has not been a principal threat to the financial health of commercial banks. Accordingly, the proposal targets

the identification of institutions with high or significant levels of risk. Institutions identified as having IRR exposure greater than a supervisor-determined threshold would be required to allocate additional capital to support their higher level of measured risk.

The proposal focuses on estimating the effect that changes in market interest rates might have on the net economic value of an institution. Exposures would be measured in terms of the interest rate sensitivity of the net present value of a bank's on- and off-balance-sheet positions. Specifically, the change in an institution's net economic value attributable to IRR would be computed as the change in the present value of its assets minus the change in the present value of its liabilities and off-balance-sheet positions for an assumed 100 basis point parallel shift in market interest rates.

A measurement methodology using data submitted on an expanded Consolidated Report of Condition and Income (Call Report) schedule would be used to approximate the change in the present value of an institution's assets, liabilities and off-balance-sheet positions for the assumed change in rates. The methodology involves assigning risk weights to both on- and off-balance-sheet positions. The risk weights approximate the price volatility of the positions in relation to changes in interest rates and would be established by the Banking Agencies. The resulting estimate of the change in net economic value for the 100 basis point shift, expressed as a percent of total assets, would be used as the primary measure of an institution's level of IRR.

The proposed measurement system is designed to minimize reporting burdens while meeting the regulatory need for identifying basic asset and liability mismatches that can materially affect a bank's financial condition. The system is not designed to derive precise measures of IRR exposure, but rather to provide an index that identifies relative orders of magnitude of IRR exposure among banks. Accordingly, the proposed measurement system is not intended to replace other, more sophisticated procedures that banks may use in their asset and liability management process.

Under the proposal, an institution with IRR exposure in excess of a threshold level would be required to allocate additional capital equal to the dollar amount of the estimated change in its net economic value that is in excess of that level. This would provide complete coverage of any incremental exposures above the established

¹ The "Basle Accord" refers to the Agreement on International Convergence of Capital Measurement and Capital Standards of July 1988, as reported by the Basle Committee on Banking Supervision. The Basle Accord has been implemented by the twelve member industrial countries participating in the Basle Committee on Banking Supervision under the auspices of the Bank for International Settlements, in Basle, Switzerland (Belgium, Canada, France, Germany, Italy, Japan, Luxembourg, the Netherlands, Sweden, Switzerland, the United Kingdom, and the United States) as well as other countries that have assented to apply the principles of the Basle Accord. In the United States, the Banking Agencies implemented the Basle Accord through the promulgation of risk-based capital guidelines. See 12 CFR part 3, appendix A (national banks); 12 CFR part 208, appendix A (state member banks); 12 CFR part 225, appendix A (bank holding companies); 12 CFR part 325, appendix A (state nonmember banks); 54 FR 4168, January 25, 1989. Interim requirements became effective at the end of 1990, and final requirements will take effect at the end of 1992.

² As defined, risk-weighted assets include credit exposures contained in off-balance-sheet instruments.

threshold. For example, if threshold levels of IRR exposure were set at 1.00 percent of total assets, an institution with a measured exposure of 1.50 percent of assets would be required to allocate a dollar amount of capital equal to 0.50 percent of total assets.

The distribution of the exposures of individual institutions across the banking industry would be used to help identify a threshold level of IRR. However, in identifying what constitutes the threshold level, the Banking Agencies will focus greater attention on what absolute level of IRR is consistent with safety and soundness. The amount of potential measurement error will also be considered. It is envisioned that the identified threshold level of IRR would remain relatively stable over time. With a stable definition of the threshold level of IRR, changing risk patterns within the industry would not cause shifts in the level of risk that would require capital coverage. Nevertheless, the Banking Agencies may need to adjust periodically the definition of the threshold level of IRR in order to account for changing market conditions, improvements in the proposed measurement system, and other factors.

The amount of any additional capital required under the proposed quantitative approach would represent the minimum capital requirement for IRR assuming that adequate internal controls and management are in place. On-site reviews could lead to higher assessments for IRR than the proposed quantitative measure would suggest if an institution's specific positions differed sufficiently from those assumed by the measure. In addition, qualitative factors such as a bank's asset/liability policies, procedures, systems and management expertise would also be considered. To the extent that such qualitative factors are determined to be inadequate during the examination process, institutions may be required to hold additional capital beyond that implied by their quantitative measure and may also be required to correct any noted deficiencies.

Section 305(b)(3) requires each federal banking agency to establish reasonable transition rules to facilitate compliance with regulations issued under section 305. The Banking Agencies envision that their proposed regulation will specify implementation of the IRR component in phases over a suitable transition period. Once implemented, institutions would need to meet capital requirements for IRR contemporaneously with the reporting date.

A. Proposed Interest Rate Risk Measurement System

1. Overview

The methodology for measuring an institution's IRR exposure applies the principles of duration to a standard maturity gap report in order to approximate the net change in the economic value of the institution arising from a change in interest rates.³ Institutions would slot their assets, liabilities and off-balance-sheet positions into a maturity ladder report based upon their remaining maturities or nearest repricing dates. The positions reported in each maturity range would then be multiplied by an IRR weight that represents the interest rate sensitivity of the respective positions. The IRR weights would be established by the Banking Agencies and would be based on the modified duration of instruments with maturities, cash flows, coupons and yields that are assumed to be representative of the position being weighted.

Modified duration measures the sensitivity of the present value of a financial instrument to changes in market rates. Specifically, modified duration measures the percentage change in the present value of an instrument for small changes in yields. The mathematical relationship is as follows:

$$\text{Percentage change in price} = - \text{Modified duration} \times \frac{\text{BP change in yield}}{100}$$

The greater the duration of the instrument, the more sensitive is its value to changes in market rates.⁴

³ The proposed measurement system was presented in preliminary form in "A Method for Evaluating Interest Rate Risk in U.S. Commercial Banks," Federal Reserve Bulletin, August 1991, p. 625-637.

⁴ The duration of an instrument is the weighted average maturity of an instrument's cash flows, where the present values of the cash flows serve as the weights. It is calculated by first multiplying the time until the receipt of each cash flow by the ratio of the present value of that cash flow to the instrument's total present value. The sum of these weighted time periods is known as the Macaulay duration of the instrument. This measure can be modified to express the price sensitivity of an instrument to a given change in rates. This is known as modified duration. Modified duration is derived by dividing an instrument's Macaulay duration by the quantity $(1 + \text{Yield}/K)$ where K is the number of times per year that interest is compounded. This division adjusts the Macaulay duration for the noncontinuous compounding of interest and increases the accuracy of duration as a measure of interest rate sensitivity.

For small changes in rates, the percentage change in the value of an instrument is equal to minus duration times the percentage point change in rates.

The duration-based risk weights used in the proposed measurement system are expressed in percentage terms, and the basis point change in rates is assumed to be 100 basis points. Therefore, the weighting of assets, liabilities and off-balance-sheet positions results in an approximation of the nominal change in the present value of the reported position for an assumed one percentage point change in rates. Netting these weighted positions both within and across time bands (weighted assets minus weighted liabilities plus (or minus) weighted net off-balance-sheet instruments) results in a "Net Risk-Weighted Position" that serves as a rough approximation of the nominal change in an institution's net economic value that would arise from a one percentage point change in rates. This net risk-weighted position, expressed as a percent of total assets, is the primary quantitative measure that would be used to evaluate an institution's exposure to IRR.

The Banking Agencies recognize that the proposed measurement system may not provide a precise measure of IRR and that errors may exist.⁵ Nevertheless, several factors argue for a relatively simple measure of IRR over other, more complex methodologies. One factor is the potential for spurious precision that can be introduced by complex models. Often, the complexity of a methodology and the precision of the data collected are dominated by the underlying assumptions used to derive an IRR exposure measure. Even the most sophisticated measures of IRR require certain assumptions that can materially affect the results. For banks, many of these assumptions relate to assets and liabilities with embedded options that make their interest rate sensitivity difficult to estimate; the interest rate sensitivity of core deposits is an important example. The overriding influence of such assumptions suggests caution in trying to estimate absolute levels of IRR across the entire industry using complex, but still generalized, measurement systems.

The minus sign reflects the inverse relationship of bond prices and interest rates.

⁵ For example, the relationship between an instrument's duration and changes in value is exact only for infinitesimal changes in rates and is only approximate for larger changes in rates. Duration is only a linear approximation of interest rate sensitivity and its convexity limits duration's explanatory ability. Moreover, its use within the measurement system assumes parallel shifts in the yield curve. These and other factors can result in estimation errors of the change in economic value when compared to similar measures derived using more complex techniques.

An additional factor supporting a relatively simple approach is the need to minimize reporting requirements while meeting regulatory needs. In general, bank supervisors do not need the same level of precision that bank management may need. The Banking Agencies also do not wish to become involved in the day-to-day operations of the institutions they regulate. Rather, regulators are concerned principally with identifying significant threats to a bank's solvency and understanding the nature of its business; they are less concerned with small changes to its earnings.

By focusing supervisory attention and capital requirements on banks with high levels of IRR, supervisors hope to avoid developing and administering date-intensive models. Although some estimation errors may exist under the

proposed measurement system, the imprecision of the measure and the use of some underlying assumptions are not likely to mask the exposures of banks facing the highest risk or cause truly low-risk institutions to appear as having high levels of IRR. The most significant errors are expected to be introduced by the treatment of core deposits, for which no measure is precise. Accordingly, because of its simplicity, the proposed measurement system is not intended to replace other, more sophisticated procedures that banks use in their asset and liability management process.

2. Information Requirements

Table 1 illustrates the repricing schedule that could be used in the proposed IRR measurement system. Summary instructions for compiling this

information in an expanded Call Report schedule are presented in the Appendix. Institutions would slot their interest bearing assets, interest bearing liabilities, demand deposits and off-balance-sheet items across six maturity ranges or time bands based on the instrument's remaining maturity or next repricing date. For illustrative purposes, lines for "Other Assets" and "Other Liabilities" are included in Table 1 to allow the schedule to "foot" to an institution's balance sheet (Call Report Schedule RC). However, only positions distributed across the time bands would be risk-weighted. All institutions would be expected to submit the proposed reporting schedule on a quarterly basis.

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TABLE 1: INTEREST RATE RISK REPORTING SCHEDULE

REPORTING INSTITUTION

EXAMPLE BANK

REPORTING DATE

12/31/92

\$ Thousands

	REMAINING TIME BEFORE MATURITY OR INTEREST RATE ADJUSTMENT						
	TOTAL	UP TO 3 MONTHS	> 3 MO. <= 1 YR.	> 1 YR. <= 3 YRS	> 3 YRS <= 7 YRS	> 7 YRS <= 15 YRS	OVER 15 YRS
I. INTEREST-BEARING ASSETS							
1. Cash & Balances Due	\$13,200	\$13,200					
2. Securities (Including Trading)							
a) Amortizing	\$42,169		\$1,950	\$4,050	\$4,332	\$12,907	\$18,930
b) Non-Amortizing	\$32,099	\$1,234	\$4,478	\$7,533	\$8,654	\$5,250	\$4,950
c) Deep Discount Coupons							
d) High Risk Mortgage Securities	\$3,000						
3. Fed. Funds Sold & Sec Purch For Resale	\$500	\$500					
4. Loans, Leases & Acceptances							
a) Amortizing	\$37,053	\$1,536	\$10,444	\$10,812	\$6,442	\$5,569	\$2,250
b) Non-Amortizing	\$52,766	\$10,202	\$13,510	\$12,791	\$6,359	\$6,854	\$3,050
5. Total Interest Bearing Assets	\$180,787	\$26,672	\$30,382	\$35,186	\$25,787	\$30,580	\$29,180
II. ALL OTHER ASSETS	\$2,463						
III. TOTAL ASSETS	\$183,250						
IV. INTEREST-BEARING LIABILITIES							
1. Interest-bearing Deposits							
a) NOW Accounts	\$27,405		\$19,183	\$8,222			
b) MMDA Accounts	\$26,270		\$18,389	\$7,881			
c) Savings	\$14,398			\$10,079	\$4,319		
d) Time Deposits	\$71,023	\$23,083	\$42,853	\$5,087			
2. Fed. Funds Purch & Sec Sold For Repurch.							
3. Other Borrowed Funds	\$127				\$127		
4. Total Interest-Bearing Liabilities	\$139,223	\$23,083	\$80,425	\$31,269	\$4,446		
V. NONINTEREST-BEARING LIABILITIES							
1. Demand Deposits	\$26,611	\$4,050	\$14,578	\$7,983			
2. Other Liabilities	\$860						
VI. TOTAL LIABILITIES	\$166,694						
VII. EQUITY CAPITAL	\$16,556						
VIII. NET OFF-BALANCE-SHEET POSITIONS							
1. Amortizing		\$100		(\$100)			
2. Non-Amortizing			\$50	\$50			
MEMORANDA							
High Risk Securities Evaluated:	Carrying Value	Market Value	Mkt Value +100 BPs	Mkt Value -100 BPs			
High Risk Securities Not Evaluated:	\$2,000	\$2,000	\$2,160	\$1,800			
	\$1,000						

In order to lessen reporting burdens, no coupon data would be collected on the reported positions. Rather, assumptions regarding coupon rates on assets and liabilities and other features of financial contracts would be made by the Banking Agencies in developing the risk weights.

By definition, an instrument's modified duration is determined by the timing of the instrument's cash flows, which are a function of its maturity, coupon rate, amortization, and other factors. The cash flows of most bonds and commercial loans consist of periodic payments of interest, plus repayment of all principal at maturity. Mortgages and consumer loans, in contrast, generally amortize; that is, their periodic payments include both principal and interest. Still other instruments such as zero coupon bonds defer all payments (both principal and interest) until maturity. These distinctions can cause the durations of instruments with similar maturities to be significantly different.

For example, A 30-year Treasury bond with a 10 percent semiannual coupon and a yield of 10 percent (priced at par) has a modified duration of about 9.5 years. However, the duration of a 30-year, 10 percent amortizing mortgage yielding 10 percent (assuming no prepayment) is about 8 years, but could be as short as 4-6 years if common levels of prepayment are considered. The modified duration of a 30-year zero coupon bond yielding 10 percent is 28.6 years because the holder must wait for the instrument's maturity to receive its entire cash flow.⁶

To capture the effect of these different payment streams, the report categorizes all loans, securities, and off-balance-sheet items into one of three groups according to their payment characteristic: (1) Amortizing instruments that pay both principal and interest periodically, (2) non-amortizing instruments that involve periodic payments of interest and the payment of principal at maturity, and (3) deep discount instruments with either no periodic interest payments (zero coupons) and other securities quoted on a discount basis or interest coupons of less than 3 percent. Interest bearing balances not specifically distributed into one of these categories are almost always non-amortizing and would be treated as such. Securities held in

Trading Accounts would be reported together with the institution's investment securities.

To minimize reporting burdens, the balances of loans and most types of securities would be distributed across the time bands on the basis of their remaining contractual maturities or repricing dates. Anticipated prepayments on amortizing instruments, such as residential mortgages and mortgage pass-through securities, would be incorporated in the duration risk weights using standardized assumptions and market expectations. Only mortgage derivative products would be treated differently. Under the recently adopted Federal Financial Institution Examination Council (FFIEC) policy statement on securities activities, mortgage derivative products are defined as interest-only and principal-only stripped mortgage-backed securities (IOs and POs), branches of collateralized mortgage obligations (CMOs) and real estate mortgage investment conduits (REMICs), CMO and REMIC residual securities and other instruments having the same characteristics as these securities. In general, mortgage derivative products would be reported differently depending on whether they were "high-risk" or "nonhigh-risk." Securities that meet the definition of a "high-risk mortgage security" under current supervisory policies on securities activities, regardless of acquisition date, would not be slotted across the time bands of the reporting schedule.⁷ Only their total

book value would be reported in the main body of the schedule. A special Memorandum item (described in Section II.A.4. below) would be used to collect information on the interest rate sensitivity of these instruments. All other mortgage derivative products would be classified as "nonhigh-risk" and would be distributed across the time bands according to their current average life as calculated by bank management.⁸

3. Liability Reporting and Core Deposits

All time deposits and other liabilities with well-defined maturities would be distributed across the time bands of Table 1. However, the indefinite maturities of core deposits (demand deposits, negotiable order of withdrawal (NOW) accounts, money market deposit accounts (MMDAs), and savings deposits) pose several measurement problems. From a liquidity standpoint, such funds can be viewed from two extremes. On the one hand, they can be viewed as very short-term funds since they can be withdrawn at any time. On the other hand, an institution's core deposit base can act as a stable long-term source of funds. From a repricing viewpoint the effective interest rate sensitivity of core deposits lies somewhere between these two extremes. Although they generally move with short-term market indices, interest rates on MMDAs and NOW accounts tend to lag changes in market rates and can vary from bank to bank according to each institution's geographic location, pricing strategies, and depositor base. Moreover, while demand deposits involve no explicit payment of interest, the adjustment of earnings credit rates on compensating balances, minimum balances and service charges indicates the periodic repricing of implicit liability costs.

Because of the uncertain and unique interest rate sensitivities of each bank's core deposits, the proposed measurement system employs uniform rules for distributing these deposits across the time bands, while still providing institutions with some flexibility. The rules would specify the longest time band that could be used for each type of core deposit and a maximum percent that could be slotted

⁷ Effective February 10, 1992 the federal banking agencies and the Office of Thrift Supervision adopted revised supervisory policies on securities activities that were developed under the auspices of the FFIEC. The revised policies established a framework for identifying "high-risk mortgage securities" which must be reported as securities held for sale or for trading. A "high-risk mortgage security" is defined as any mortgage derivative product that, at the time of purchase, or at a subsequent date, meets any of the following tests:

(1) *Average Life Test*—The mortgage derivative product has an expected weighted average life greater than 10.0 years.

(2) *Average Life Sensitivity Test*—The expected weighted average life of the product:

(a) extends by more than 4.0 years, assuming an immediate and sustained shift in the yield curve of plus 300 basis points, or

(b) shortens by more than 6.0 years, assuming an immediate and sustained shift in the yield curve of minus 300 basis points.

(3) *Price Sensitivity Test*—The estimated change in the price of the mortgage derivative product is more than 17 percent, due to an immediate and sustained shift in the yield curve of plus or minus 300 basis points.

In general, a mortgage derivative product that does not meet any of the three tests is considered to be a "nonhigh-risk mortgage security."

⁶ While the Macaulay duration for a 30-year zero coupon bond is 30, its modified duration is calculated as the value $(\text{Maturity}/(1 + \text{Yield}/\text{Number of Compounding Periods}))$. Since zero coupon yields are quoted in terms of semi-annual yields the modified duration for this example instrument is $(30/(1 + .10/2))$.

⁸ All underlying assumptions used in calculating the average life of these instruments must be reasonable and available for examiner review. For example, if an institution's prepayment assumptions differ significantly from the median prepayment assumptions of several major dealers as selected by examiners, the examiners may use these median prepayment assumptions in determining the appropriate average life of the instrument.

into that time band. Institutions would slot core deposits according to their individual assumptions and experience, subject to the following constraints:

(i) Under the assumption that transaction accounts fund a bank's non-interest-bearing balances and currency and coin, both this cash balance and an equal amount of demand deposits would be slotted in the shortest time band. If demand deposit balances were insufficient, other core deposits would be used.

(ii) Residual demand deposit, MMDA and NOW account balances could be distributed across any of the first three time bands provided that no more than 30 percent of the total of these balances were slotted in the "1-3 year" time band.

(iii) Savings account balances could be distributed across any of the first four time bands provided that no more than 30 percent of the total of these balances were slotted in the "3-7 year" time period.

4. Off-Balance-Sheet Positions and "High Risk" Securities

Off-balance-sheet positions would be summarized in the lines provided for "Net Off-balance-Sheet Positions" on the proposed IRR reporting form. As with bank assets, off-balance-sheet items would be grouped into amortizing and non-amortizing categories on the basis of their underlying instruments. Futures, forwards, options and firm commitments to buy or sell loans and securities would be reported using one entry in the time band corresponding to the maturity of the underlying instrument and the appropriate sign: positive for a long position and negative for a short position. In general, the value

of options would be reported using their delta equivalent value. This value is equal to the option's current delta multiplied by its principal or notional value.⁹

Interest rate swaps and options on swaps would be reported based on notional principal values using two separate entries: one entry in the time band corresponding to the next repricing period of the floating side of the swap and an offsetting entry in the time band corresponding to the maturity of the swap. The sign of each entry would denote what the bank receives (positive sign) and what it pays (negative sign). Options on interest rate swaps would be reported similarly using delta equivalent values. The proposed reporting treatment for off-balance-sheet instruments is detailed in the appendix.

Under revised supervisory policies on securities activities that became effective on February 10, 1992, institutions must evaluate at least quarterly whether their holdings of high-risk mortgage securities reduce interest rate risk. The reporting form takes advantage of the availability of this information by allowing an institution to report, in a memorandum item, the current market value of high-risk mortgage derivative products along with their estimated market values for a 100 basis point increase and decrease in market rates. Such data would be used

⁹ The delta is the ratio of the change in the value of the option to the change in price of the underlying instrument. For example, if the price of a security changed by 0.05 for a 1 basis point change in market rates and the value of an option on that security changed by 0.025, the delta for this option would be 0.025/0.05 or 0.5. Delta can take values ranging from 0 to 1.

directly in calculating an institution's IRR exposure.

Mortgage derivative securities that were purchased prior to February 10, 1992 and that meet the high-risk tests are subject to previously existing supervisory policies and are, therefore, not subject to the quarterly IRR risk evaluation criteria. For such holdings, institutions would have the option to: (1) Report the interest rate sensitivity of these holdings in a similar fashion as post-February 10, 1992, purchases, or (2) report only the current book value of those securities. Balances reported under the second option would be assumed to have price sensitivity characteristics similar to long-dated, deep discount instruments and would receive the same risk weight that is applied to long-term, deep discount instruments. For illustrative purposes, the example bank in Table 1 has reported interest rate sensitivity data on \$2 million in high-risk mortgage derivative securities and has elected to report only the current book value for \$1 million of securities that would otherwise meet the current high-risk tests but were purchased prior to February 10, 1992.

5. Derivation of Risk Weights

In the proposed measurement system, each position reported on the IRR repricing schedule (summarized in the top panel of Table 2) is multiplied by a risk weight representing its price sensitivity or modified duration. The system employs four sets of risk weights: one for each of the three types of assets (amortizing, non-amortizing, and deep discount) and one for all liabilities (middle panel of Table 2).

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The hypothetical instrument used to estimate the modified durations for amortizing instruments with remaining contractual maturities beyond 15 years would be a 30-year mortgage pass-through security with the composite characteristics (gross and net coupons, original and remaining maturity, etc.) of currently outstanding 30-year government and conventional mortgage pass-through securities. Similarly, a composite 15-year mortgage pass-through security would be used to estimate the risk weights for amortizing instruments with maturities between 7 and 15 years. For instruments with maturities less than 7 years, a standard monthly amortizing instrument would be used that had:

(1) An original maturity equal to the end point of the specific time band, (2) a remaining maturity equal to the midpoint of the time band, and (3) a coupon and yield equal to the effective yield on the industry's earning assets.

An important consideration in estimating the IRR of amortizing instruments is the potential for prepayments. In calculating the modified durations or risk weights for amortizing instruments with maturities greater than 7 years, market consensus prepayment estimates for the hypothetical composite instrument would be used to adjust the cash flows. Amortizing instruments with maturities of less than 7 years would be assumed to be consumer installment loans and adjustable rate mortgages with prepayment profiles that only marginally influence their modified duration.¹⁰ Under the proposed

measurement system, the risk weights for amortizing instruments may be adjusted in the event of significant changes in market interest rates, outstanding coupon distributions, and other factors.

The risk weights or modified durations for the non-amortizing assets are calculated assumed semi-annual interest payments, a maturity equal to the mid-point of each time band, and an assumed coupon and yield equal to the effective yield on the industry's earnings assets. The deep discount risk weights are based on the modified durations of a zero coupon instrument with the same yield. Only one set of risk weights would be used for liabilities—the modified durations for a semi-annual interest bearing instrument with an assumed coupon and yield equivalent to the effective yield on interest bearing liabilities.¹¹

6. Calculation of the Interest Rate Risk Measure

Under the proposed measurement system, the weights are expressed in percentage points to approximate the percentage change in the value of the hypothetical instrument for a 100 basis point change in rates. For example, the \$1.536 million of amortizing assets reported in the up-to-3-month time band (top panel of Table 2) when multiplied or "weighted" by 0.0008 (or .08% as shown in the middle panel) results in an estimated \$1,230 change in the present value of that position. If the estimated dollar change is assumed to be in response to a 100 basis point increase in rates, this estimated amount would represent a decline in the present value of those assets. Conversely, the estimated dollar change would represent an increase in present value for an assumed 1 percent decline in rates. The sum of the results of all such multiplications produces an overall duration-based estimate of the institution's interest rate risk: the reduction (increase) in the present value of all positions that would follow a 1 percentage point increase (decline) in market interest rates. From a supervisory perspective, the past volatility of interest rates on U.S. Treasury securities of various maturities suggests that a 100 basis point change in market rates would cover 1 to 1.5

standard deviations of quarterly changes in market yields, depending on the time period chosen for the analysis.¹²

Remaining maturity	Jan. 1962– Dec. 1990 standard deviation basis point change	Jan. 1984– Dec. 1990 standard deviation basis point change
3 Month.....	125 bp	69 bp
1 Year.....	115 bp	79 bp
3 Year.....	91 bp	80 bp
5 Year.....	81 bp	78 bp
10 Year.....	68 bp	73 bp
30 Year.....	na	68 bp

As shown in Table 2, a 1 percentage point increase in market rates is estimated to reduce the present value of the example bank's assets by \$4.697 million (bottom panel, left hand column), lower the present value of its liabilities by \$1.444 million, and reduce the value of its off-balance-sheet items by \$330. The interest rate sensitivity data reported for high-risk mortgage derivative products suggests that their value would increase by \$160,000, given a 1 percentage point increase in rates. The net result, called the "Net Risk-Weighted Position" in Table 2, is an estimated decline of \$3.083 million in the net economic value of this institution. This net risk-weighted position, when expressed as a percent of assets, is the primary measure of the level of interest rate sensitivity for an institution. When calculated for all banks, it also provides a general indication of the industry's sensitivity to changing rates and can serve as a basis for identifying those banks that appear to have the highest exposures.

B. Identifying Institutions With Significant Interest Rate Risk

The proposed approach recognizes that a certain amount of IRR is inherent and appropriate in commercial banking. In addition, it acknowledges that the level of IRR in banks is difficult to measure with a high degree of confidence. Finally, the approach takes into consideration the fact that, to date, IRR has not been a principal threat to the financial health of commercial banks.

In view of these considerations, it appears appropriate first to consider the level of IRR exposure taken by the industry and then to determine a threshold level of measured exposure that should be considered "high" and

¹⁰ Prepayment estimates represent the expected rate of prepayment over the life of the mortgage assuming no changes in current interest rates. In general, consensus prepayment estimates for 15-year government and conventional pass-through securities would be used to derive prepayment expectations for the 7–15 year amortizing asset and estimated prepayments for 30-year mortgage pass-through securities would be used to derive expected prepayments for the over 15 year amortizing asset.

The amortizing risk weights shown in Table 2 for the two longest time bands are the modified durations of hypothetical mortgage securities that were constructed using data on outstanding mortgage pass-through securities, consensus prepayment estimates and market prices as of May 29, 1992. Specifically, the hypothetical instrument used for the greater-than-15-year time band is a 9 percent mortgage security with a gross coupon of 9.7 percent, an original maturity of 30 years, a remaining maturity of 25.4 years and an assumed conditional prepayment rate (CPR) of approximately 12 percent. The hypothetical instrument used for the 7–15 year time band is an 8.5 percent mortgage security with a gross coupon of approximately 9.12 percent, an original maturity of 15 years, a remaining maturity of 12.2 years and an assumed conditional prepayment rate of approximately 14 percent. No prepayment rates were used in calculating the amortizing risk weights under 7 years.

¹¹ The specific non-amortizing and deep discount risk weights shown in Table 2 are based on an assumed 10.0 percent coupon, which approximates the average effective yield on earning assets at all commercial banks during 1991. For the liability weights in Table 2, a 7.25 percent coupon is assumed, which approximates the effective yield on interest bearing liabilities at all commercial banks during 1991.

¹² The standard deviations of quarterly changes in U.S. interest rates for different time periods are as follows.

should be supported by a capital charge. This approach would require additional capital only for those institutions taking relatively larger risks and would avoid imposing a costly reporting and risk monitoring system on the commercial banking system.

The present Call Report contains insufficient detail to produce an industry distribution of IRR sensitivities that would be as accurate as one produced using the proposed measurement system. For example, maturity and repricing data currently are reported for only four time bands, and the longest band contains all positions repricing in more than five years. In addition, little information is available on off-balance-

sheet items. These constraints, and similar ones regarding information about the classification of assets into various cash flow categories, require that certain assumptions be made in order to use existing information. Available Call Report data as been used under these assumptions to develop rough industry distributions in order to identify, on a preliminary basis, the relative orders of magnitude of IRR exposure across the industry.

The distribution of the industry's exposure to changing rates, like the measured exposure of individual banks, is dependent upon the treatment of core deposits. Using the core deposit slotting rules outlined in Section II.A.3. above,

an industry distribution of individual bank exposures has been constructed using each bank's estimated net risk-weighted position expressed as a percent of total assets (Chart 1). The industry's median institution is estimated to have a positive net risk-weighted position and therefore appears to have assets with maturities slightly longer than those of its liabilities, making the bank slightly exposed to rising interest rates. As a percentage of assets, its economic value would change an estimated 0.52 percent for each percentage point change in rates.

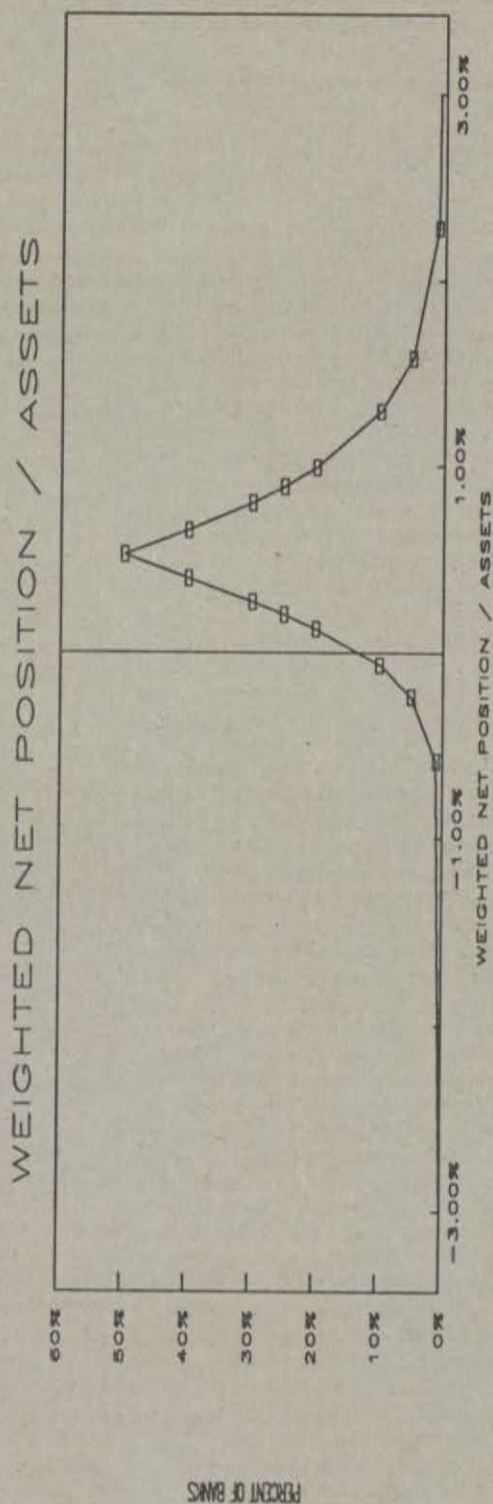
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CHART 1

ESTIMATED LEVELS OF IRR AS OF 12/31/91

11,916 Banks

Core Deposit Assumptions = Cash Offset With DDA's; MMDA's, Nows & DDA's Up to 1-3 Yr.; Savings Up to 3-7 Yr.
No More Than 30% Of Core Deposit Balances In The Maximum Allowable Time Band



PERCENTILES	1%	5%	10%	20%	25%	30%	40%	50%	60%	70%	75%	80%	90%	95%	99%
IRR LEVELS	-0.59%	-0.24%	-0.07%	0.13%	0.20%	0.27%	0.40%	0.52%	0.65%	0.80%	0.89%	0.99%	1.30%	1.58%	2.29%

MEAN = 0.58% STD. DEV. = 0.58%

BILLING CODE 4810-33-C; 6210-01-C; 6714-01-C

To recognize exposures to both rising and declining rates, institutions with the highest levels of IRR would be identified in both tails of the industry distribution curve using an absolute level of IRR exposure as measured from zero. Considering the potential for measurement error, the supervisory experience to date with IRR, and the absolute level of IRR which would be considered "high" on the basis of safety and soundness considerations, a risk-weighted position of 1.0 percent of assets, on an absolute basis, may be a reasonable threshold at which to begin assessing capital. The sign of the risk-weighted position would indicate whether an institution is exposed to rising or falling interest rates. For example, a risk-weighted position of -1.0 percent would indicate an exposure to falling interest rates, while a risk-weighted position of +1.0 percent would indicate an exposure to rising rates. The estimated distribution in Chart 1 suggests that a cut-off point at the 1 percent level would affect about 20 percent of the industry with virtually all of the institutions affected being exposed to rising rates. It is expected, however, that most of these institutions already have sufficient capital in excess of regulatory minimums to meet their IRR requirements without raising additional funds.

C. Capital Requirements for IRR

Once identified, institutions with high levels of IRR would be required to cover their "excess" exposure by allocating capital in the amount of that excess. For threshold levels of IRR defined at 1 percent of assets, a bank with a measured IRR exposure of 1.68 percent (Table 2) would be required to allocate capital sufficient to compensate for the estimated change in economic value above 1 percent of assets. Its IRR capital requirement would be calculated as shown below:

$$\begin{aligned} \text{Risk Measure} - \text{Threshold Level} &= \text{Excess Position} \\ 1.68\% - 1.00\% &= .68\% \text{ of total assets.} \\ \text{Excess Position} \times \text{Total Assets} &= \text{Additional Capital Required} \\ .68\% \times \$183,250,000 &= \$1,246,100 \end{aligned}$$

It is proposed that any capital requirement for IRR be based on Tier 1 capital rather than total capital since subordinated debt, a significant component of Tier 2 capital, is incorporated into the measurement of an institution's IRR exposure. In addition, it is proposed that any capital allocated for IRR would not be available for meeting other risk-based capital requirements not related to interest rate risk. However, because risk-based

capital components for other types of risk are being considered, the Banking Agencies would retain the flexibility to revisit this proposal and other aspects of the risk-based capital guidelines in the future.

D. Supervisory Application of the Risk Measure

Bank supervision entails both off-site surveillance and on-site examinations. If adopted, the procedures described herein for measuring interest rate risk would enable bank supervisors to screen banks off-site to identify institutions with relatively high levels of measured interest rate risk and to evaluate the institutions' level of capital adequacy. Because the procedures are relatively simple, banks could monitor their own positions and their continuing conformance to capital standards. Indeed, under the proposal, banks would be expected to maintain sufficient capital to cover their IRR and other requirements on a daily basis.

Additional capital requirements derived under the proposed measurement system would be regarded as the minimum capital required for IRR and would be subject to examiner review. Higher assessments would be possible if a bank's specific positions differed sufficiently from those assumed in the measurement system. Such adjustments might be particularly appropriate in the case of high-risk mortgage derivative products. In general, institutions would be expected to demonstrate the risk-reducing properties of these holdings using more sophisticated measurement systems than those entailed in the proposal. Failure to demonstrate such properties could result in the disallowance of their use in computing the institution's IRR exposure for capital adequacy purposes.

Qualitative factors such as a bank's asset/liability policies, procedures, systems, and management expertise would also be considered as part of the examiner review. To the extent that such qualitative factors are determined to be inadequate during the examination process, institutions could be required to allocate additional capital beyond that implied by their quantitative measure and could also be required to correct or strengthen their practices.

Supervisors would also use the proposed measurement system as a means of allocating examination resources. During an examination of any commercial bank, examiners would use the interest rate risk measure as an indicator of how they should allocate their time and resources. Institutions with apparently high interest rate risk would be more likely to receive more

detailed reviews of their asset and liability management procedures than would those with lower risk profiles.

E. Foreign Currency Positions

For banks that have non-U.S. dollar denominated financial instruments, it is proposed that such positions be converted to U.S. dollars and reported along with all other on- and off-balance-sheet positions on the same reporting form. Each currency would be converted into the equivalent U.S. dollar amount, using market exchange rates prevailing on the reporting date.

The Banking Agencies seek comment on the complete degree of offsetting among instruments in different currencies that is implied in this treatment. The issue here is whether different currencies exhibit broadly similar interest rate movements with any degree of regularity, such that opposing interest rate positions in different currencies could be regarded as hedging one another. An exact measurement based on the correlation of all rates in all currencies could be extremely complex and difficult to incorporate into the measurement system. A conservative solution would be to permit no offsetting between positions in different currencies and require separate reporting of "significant" positions denominated in foreign currencies. Such a solution may be overly harsh, as it implies that interest rate movements in different currencies demonstrate perfect negative correlation. On the other hand, the proposed approach of allowing full offsetting may be too generous, by implying that rates have perfect positive correlation.

F. Issues For Consideration

The Banking Agencies request comment on all aspects of the proposal for incorporating IRR into the risk-based capital guidelines, including comments on the costs and benefits of this proposal, the estimation methodology and the manner in which additional capital would be required.

In addition, the Banking Agencies request specific comments on the following topics:

Comment 1: The proposed IRR reporting schedule employs six time bands and three cash flow categories. The Banking Agencies request comment on the reporting burden entailed in slotting assets (both loans and securities) and liabilities among the six time bands and three cash flow categories.

(a) Does the reporting burden increase substantially if the number of time

bands is increased to improve the availability of data for both regulatory and internal bank management purposes?

(b) Would the reporting burden be reduced if more specific cash flow categories were used instead of the three broad categories of amortizing, non-amortizing, and deep discount?

(c) What reporting burden would be imposed by collecting average coupon and yield data?

(d) What reporting burden would be imposed by having institutions report positions using daily, weekly, or monthly average balances rather than the proposed quarter-end balances?

Comment 2: In the proposed measurement system, the risk weights for amortizing instruments are developed from composite instruments and consensus prepayment expectations. Having institutions report their own estimates of the expected cash flows on these instruments might improve the accuracy of the proposed measure and could eliminate the need for separate amortizing risk weights.

(a) Would institutions prefer to report their own anticipated cash flows, average lives, or durations on certain types of assets rather than reporting data based on an instrument's remaining contractual maturity or its next repricing period?

(b) In this context, to what extent can institutions estimate the expected cash flows for consumer loans, home equity loans, and other assets where prepayment expectations are difficult to obtain?

(c) If institutions are permitted to use their own cash flow estimates for reporting, what types of documentation and analysis should be required to support those estimates?

Comment 3: Under the proposed system, trading account assets would be reported with investment securities.

(a) To what extent should such assets be reported separately and treated differently by, for example, limiting their ability to hedge nontrading positions?

(b) Is a separate treatment for off-balance-sheet instruments that are held for trading purposes or held on an intermediary basis necessary in order to distinguish them from instruments used to hedge nontrading positions?

Comment 4: The proposed core deposit slotting rules specify the longest time band that could be used to slot each type of core deposit and the maximum allowable amount that could be slotted into that time band.

(a) Do the proposed slotting rules provide sufficient flexibility to reflect an institution's actual core deposit repricing behavior? If not, how should

the rules be devised to reflect repricing behavior while limiting the potential for unrealistic assumptions being used to reduce additional capital charges?

(b) How do the implied liability costs of banking services affect the interest sensitivity of core deposits?

Comment 5: The reporting format used for off-balance-sheet items (described in the Appendix) involves a one-legged reporting approach for futures, forwards and options, and a two-legged reporting approach for interest rate swaps.

(a) To what extent would reporting burdens be reduced if a one-legged reporting approach for interest rate swaps were used? Such an approach would eliminate the floating-rate leg under the assumption that swaps are sufficiently short-term and would receive small risk weights.

(b) To what extent would reporting burdens be increased if a two-legged approach for futures, forwards, and options were used? Such an approach would add an offsetting leg at the settlement date/exercise date.

Comment 6: The proposed measurement system specifies the use of delta equivalent values in reporting options and allows this reporting framework for interest rate caps and floors.

(a) What is the reporting burden involved in using delta equivalent values in reporting options?

(b) Are institutions able to report interest rate caps and floors as a series of options using delta equivalent values?

(c) Should institutions be allowed to use options pricing models to estimate the market value changes of options positions in a manner similar to that proposed for high-risk mortgage securities? For example, institutions could value options transactions (e.g., caps, floors, and options) for interest rate changes of plus or minus 100 basis points holding volatility constant.

Comment 7: How should mortgage servicing rights be treated in the proposed measurement system?

Comment 8: Should an exemption from the proposed interest rate risk test be allowed for institutions which can clearly be identified as having low interest rate risk?

(a) If an exemption is granted, what alternative measurement methodology could be used to determine low interest rate risk? Please provide quantitative and analytical support for the method recommended.

(b) How often should an institution have to perform the exemption test?

(c) How could the concept of static gap be used to develop certain thresholds that would, in turn, be used

to determine whether an institution is exempt from reporting requirements?

Comment 9: In the proposed measurement system, the interest rate risk weights are developed from composite instruments.

(a) What assumptions should be used in developing the interest rate risk weights?

(b) Should the risk weights be adjusted to account for the reduced volatility of yields on longer term instruments? This adjustment could be done by scaling down the risk weights as maturity lengthens.

(c) What changes in market conditions or other factors would require revision of the risk weights? How could such revisions be incorporated as an automatic mechanism in the proposed measurement system?

Comment 10: As proposed, the IRR measure uses the following conceptual framework:

$$\begin{aligned} (Da \times \$Assets) - (Dl \times \$Liabilities) \\ = (De \times \$Equity) \\ = \text{net risk-weighted position} \end{aligned}$$

Where:

Da = Duration of Assets
Dl = Duration of Liabilities
De = Duration of Equity

Under this measure, the net risk-weighted position increases as a bank's capital ratio grows. Therefore, to the extent that an institution is required to hold additional capital to support high levels of IRR, this additional capital will have the net result of marginally increasing the institution's measured IRR exposure. While this effect is undesirable and correctable, its significance may be relatively small and its impact may be limited to those institutions with IRR exposures close to the defined threshold level of risk. The effect could be corrected by "normalizing" each institution's risk-weighted liabilities (lower panel of Table 2) by the following factor prior to calculating the institution's net risk-weighted position.

$$\text{Adj. RWL} = \text{RWL} \times (A/L) \times s$$

Where:

Adj. RWL = Adjusted Risk-weighted Liabilities
RWL = Risk-weighted Liabilities
A = total assets
L = total liabilities
s = the industry average ratio of total liabilities to total assets.

The effect of this adjustment is to assign all institutions with the same durations of assets and liabilities an identical risk measure by slightly increasing the measure of institutions with net worth ratios lower than the industry average and slightly reducing the measure for those with higher than

average ratios. Does the added precision provided by this adjustment merit the additional complexity introduced by its use?

Comment 11: The proposal uses the regulatory parameters of an assumed 100 basis point change in interest rates and a plus or minus 1 percent ratio for the net risk-weighted position as a percentage of assets for identifying outliers.

(a) Is the assumed 100 basis point change in rates sufficient in light of the historical volatility of interest rates, the quarterly reporting time frame, and the relative complexity of alternative assumptions? If not, what change in rates should be assumed and what adjustments would need to be made to the proposed measurement system?

(b) On a preliminary basis, does the proposed plus or minus 1 percent ratio for the net risk-weighted position as a percent of assets entail sufficient supervisory coverage? If not, what level of exposure should be covered?

Comment 12: Are there other ways, besides additional capital charges, to address IRR and still meet the requirements of section 305 of FDICIA?

Comment 13: Under the proposal, data would be collected and risk measured for individual banks. However, it must also be recognized that many bank holding companies manage their interest rate risk at levels other than individual banks by offsetting positions held by one bank with positions of another bank or nonbank affiliate. In addition to reviewing individual bank positions, to what extent should the Banking Agencies also consider consolidated positions of the parent holding company or, alternatively, the aggregate position of only its affiliated banks?

Comment 14: As discussed in Section I.E., how should instruments denominated in different currencies be treated in the proposed measurement system?

III. Concentration of Credit Risk

As with interest rate risk, section 305 requires each federal banking agency to revise its risk-based capital guidelines to take adequate account of concentration of credit risk. Currently, this risk is considered when performing an overall evaluation of an institution's capital adequacy. In making this revision, the Banking Agencies must consider an appropriate definition for concentration and must also assess whether current risk-based capital guidelines take adequate account of concentration of credit risk. In this regard, the Banking Agencies seek industry comments on the following questions and issues:

Comment 15: What factors should be taken into account in defining concentration of credit risk for risk-based capital purposes—e.g. industry, geography, collateral, loan type or all of these characteristics?

Comment 16: How should risk-based capital guidelines be revised, if at all, to take adequate account of concentration of credit risk?

Comment 17: Should there be a requirement for additional capital based on an objective formula that increases with asset concentrations, or should capital be based on an overall evaluation of an institution's capital adequacy?

How should an objective formula be specified? What factors should be considered when performing an overall evaluation of an institution's capital adequacy?

Comment 18: What other factors should be considered in revising capital guidelines for concentration of credit risk?

IV. Nontraditional Activities

Finally, section 305 also requires each federal banking agency to revise its risk-based capital guidelines to take account of the risks of nontraditional activities. Since risk-based capital standards were formulated in the mid-80s, banks have commenced certain activities, such as commodity-linked transactions, that were not directly identified or explicitly treated in the risk-based capital guidelines. These activities have been monitored by the Banking Agencies and are currently considered as part of the overall evaluation of an institution's capital adequacy. New or nontraditional activities have been reviewed for their appropriate treatment in the risk-based capital framework. If a new activity has not appeared to fit readily within the existing risk-based capital definitions, interpretations have been made to clarify the new activity's appropriate treatment for capital purposes.

In implementing section 305, the Banking Agencies would formalize this process to ensure that institutions hold capital commensurate with the risks of nontraditional activities. Risk-based capital guidelines would be amended to incorporate the risks of nontraditional activities. In this regard, the Banking Agencies seek industry comments on the following questions and issues:

Comment 19: What should the Banking Agencies consider to be a nontraditional activity?

Comment 20: Should there be a requirement for additional capital based on a general, objective formula, or should additional capital be required

based on a case-by-case evaluation of the risks of the nontraditional activity in the context of an institution's risk profile and capital adequacy? How should an objective formula be structured?

Comment 21: How should risk-based capital guidelines be revised to take adequate account of the risks of nontraditional activities? Should the Banking Agencies consider such factors as whether the nontraditional activity is conducted directly in the institution or indirectly through a subsidiary?

Comment 22: What factors should be considered when evaluating the risks of nontraditional activities?

Appendix—Summary Instructions for Compiling the Interest Rate Risk Reporting Schedule

The IRR Reporting Schedule spans six maturity/repricing time bands. Unless specified otherwise, the dollar balances of fixed-rate assets, liabilities and off-balance-sheet positions should be slotted in the time band that corresponds to the instrument's remaining contractual maturity. The dollar balances of floating-rate assets, liabilities, and off-balance-sheet positions should be slotted in the time bands that correspond to the instrument's next repricing date or, if the instrument does not reset again, its maturity date. Floating-rate loans or securities whose reset index rate is within 100 basis points of the instrument's lifetime cap or ceiling should be slotted according to their remaining contractual maturity.

Securities and loans are reported in one of three basic asset categories based on their cash flow characteristics: Amortizing, Non-amortizing and Deep Discount. With the exception of mortgage derivative securities, which have separate slotting rules, amortizing instruments are those assets that involve a periodic payment of both principal and interest more frequently than once a year. Non-amortizing instruments are all other assets with coupons greater than 3 percent, while deep discount instruments are all other interest bearing assets with coupons of 3 percent or less. Exhibit 1 summarizes how specific assets might be classified in the proposed reporting system. Note that certain classes of assets, such as asset-backed securities, could be classified in one of several categories depending upon their payment characteristics.

EXHIBIT 1.—EXAMPLE CLASSIFICATIONS OF BANK ASSETS BY GENERIC CATEGORIES FOR REPORTING PROPOSES

Assets	Non-amortizing	Amortizing	Deep Discount
Securities:			
Treasury & Agency	X		X
GNMA, FNMA, FHLMC Mortgage Pass-through Securities		X	
"Nonhigh-Risk" CMO's, REMIC's	X		
Municipal	X	X	X
Other Mort. Pass-Through Sec.		X	
Foreign Securities	X	X	X
Asst Backed Securities	X	X	
Loans:			
Real Estate:			
Construction & Development	X		
Farmland	X	X	
Residential Revolving Lines	X	X	
Residential Mortgages		X	
Multi-Family Mortgages		X	
Non-Farm & Non-Residential	X	X	
Depository Institutions	X		
Agricultural Loans	X	X	
Commercial & Industrial Loans	X		
Banker's Acceptances			X

EXHIBIT 1.—EXAMPLE CLASSIFICATIONS OF BANK ASSETS BY GENERIC CATEGORIES FOR REPORTING PROPOSES—Continued

Assets	Non-amortizing	Amortizing	Deep Discount
Consumer:			
Revolving Lines	X		
Other	X		
Municipal	X		
All Other	X		

Non-U.S. dollar denominated financial instruments should be converted to U.S. dollars and reported along with all other on- and off-balance-sheet positions on the reporting form. Each currency should be converted into the equivalent U.S. dollar amount, using market exchange rates prevailing on the reporting date.

Line-by-Line Instructions

In general, the items requested on the IRR reporting schedule coincide with items reported in the institution's Consolidated Report of Condition and Income (Call Report). For most items, the dollar balances in the "Total" column on the IRR Reporting Schedule will coincide with the dollar balances on the referenced Call Report schedule.

The instructions below follow the IRR Reporting Schedule (Table 1) line by line.

I. Interest-Bearing Assets

(Slot by contractual maturity or next repricing date unless otherwise indicated)

1. Cash and Interest-Bearing Balances Due

Slot Call Report Schedule RC, Item 1.a, "noninterest bearing balances and currency and coin," in the 0-3 month time band and

distribute Call Report Schedule RC, Item 1.b, "interest balances," accordingly.

2. Securities (Including Trading)

Fixed income Trading Account and Investment Securities should be reported together.

(a) Amortizing

Slot dollar balances of mortgage pass-through securities using their remaining contractual maturity assuming no prepayments. The interest rate risk weights are adjusted for expected prepayments. Pass-through securities include:

- FNMA and FHLMC Securities (Schedule RC-B, Item 2.a.(1))
- GNMA Securities (Schedule RC-B, Item 2.a.(2))
- All other pass-throughs (Schedule RC-B, Item 4.a.)

• Pass-throughs in Trading Account

Dollar balances of adjustable-rate mortgages (ARMs) should be slotted according to their next repricing date unless the loan rate, as of the reporting date, is within 100 basis points of the instrument's lifetime cap. Only when this latter event occurs should ARMs be slotted according to their contractual maturity. Include any other security that involves a periodic payment of principal more frequently than once a year (e.g., asset-backed securities backed by installment loans).

(b) Non-Amortizing

All non-amortizing fixed income securities with coupons greater than 3 percent. These securities include:

- U.S. Treasuries, agency debentures, municipal bonds, domestic and foreign bonds.

Callable bonds should be slotted in the time band corresponding to the call date associated with the current market price.

Example: The institution owns \$1 million (book value) of a corporate bond with a remaining maturity of 6 years, a current market price of 101.0 and the following call schedule:

Callable in	1 year	2 years	3 years	4 years	5 years	6 years
At a price of	105	104	103	102	101	100

Based on the current price of 101 and a call price of 101 in 5 years, the bond would be slotted in the 3-7 year time band.

Floating-rate securities whose reset index is within 100 basis points of the instrument's lifetime cap should be slotted according to their contractual maturity.

Mortgage derivative products (CMOs, REMICs, etc.) that meet the following definition of "nonhigh-risk" securities, regardless of acquisition date, should be reported based on their current remaining average life. A mortgage derivative product that does not meet any of the following three tests is considered to be a "nonhigh-risk mortgage security."

(1) **Average Life Test**—The mortgage derivative product has an expected weighted average life greater than 10.0 years.

(2) **Average Life Sensitivity Test**—The expected weighted average life of the product:

(a) extends by more than 4.0 years, assuming an immediate and sustained shift in the yield curve of plus 300 basis points, or

(b) shortens by more than 6.0 years, assuming an immediate and sustained shift in the yield curve of minus 300 basis points.

(3) **Price Sensitivity Test**—The estimated change in the price of the mortgage derivative product is more than 17 percent, due to an immediate and sustained shift in the yield curve of plus or minus 300 basis points.

(c) Deep Discount Coupons

All fixed income securities with coupons of 3 percent or less not reported in the amortizing and non-amortizing categories above. Such securities include: zero coupon securities, securities quoted on a discount basis, and low coupon U.S. Treasuries, agency debentures, municipal bonds, and domestic and foreign bonds.

(d) High-Risk Mortgage Securities

Report the current carrying value of all mortgage derivative products (CMOs, REMICs, etc.) that meet the following definition of "high-risk" securities, regardless of acquisition date. Do not slot these instruments across the maturity ladder. (See

Memorandum item below.) A mortgage derivative product that meets any of the following three tests is considered to be a "high-risk mortgage security."

(1) *Average Life Test*—The mortgage derivative product has an expected weighted average life greater than 10.0 years.

(2) *Average Life Sensitivity Test*—The expected weighted average life of the product:

(a) extends by more than 4.0 years, assuming an immediate and sustained shift in the yield curve of plus 300 basis points, or

(b) shortens by more than 6.0 years, assuming an immediate and sustained shift in the yield curve of minus 300 basis points.

(3) *Price Sensitivity Test*—The estimated change in the price of the mortgage derivative product is more than 17 percent, due to an immediate and sustained shift in the yield curve of plus or minus 300 basis points.

3. Federal Funds Sold & Securities Purchased for Resale

Federal Funds Sold & Securities Purchased with Agreements to Resale (Schedule R, Items 3.a. and 3.b.)

4. Loans, Leases & Acceptances

Slot the dollar balances of loans and leases excluding those in nonaccrual status but including any unearned income on the loans.

The total of amortizing loans and non-amortizing loans including leases and acceptances should correspond to the sum of the dollar balances on Schedule RC-C Memoranda Item 3.c. (2.c. for banks filing FFIEC 034) and Schedule RC, Item 9.

(a) Amortizing

All amortizing loans including:

- Residential, single-family and multifamily mortgages, consumer installment loans.

Include any other loans and leases that involve a scheduled periodic repayment of principal more frequently than once a year.

(b) Non-Amortizing

All other loans and leases not slotted under amortizing loans including the dollar balances of Customers' Liability to Bank on Acceptances Outstanding (Schedule R, Item 9). Credit card receivables and other loans with indefinite maturities should be slotted based on management's determination of their effective repricing sensitivity.

5. Total Interest-Bearing Assets

Calculated as the sum of Items 1, 2, 3, and 4 above.

II. All Other Assets

Calculated as the difference between Total Interest-Bearing Assets calculated in Item I.5. above and the institution's Total Assets as reported on Schedule RC, Item 12. This item is included for illustrative purposes to allow the IRR reporting schedule to "foot" to Schedule RC.

III. Total Assets

Equal to Schedule RC, Item 12. This item is included to illustrate how the IRR reporting schedule "foots" to Schedule RC.

IV. Interest-Bearing Liabilities

1. Interest-Bearing Deposits

Institutions should slot interest-bearing core deposits (Items IV 1.a. through IV 1.c. on the IRR reporting schedule) across the maturity ladder within the following constraints:

(a) To the extent that demand deposit balances are insufficient to offset the cash balances reported in Item I.1. above, (see Item V.1. below) NOW account balances should be slotted in the first time band. Remaining NOW account balances can be distributed across any of the first three time bands with no more than 30 percent of these balances slotted in the 1-3 year time band.

(b) To the extent that both demand deposit and NOW account balances are insufficient to offset the cash balances reported in Item I.1., (see Item V.1. below) MMDA account balances should be slotted in the first time band. Remaining MMDA (Schedule RC-E Memoranda, Item M.2.a.(1)) account balances can be distributed across any of the first three time bands with no more than 30 percent of these balances slotted in the 1-3 year time band.

(c) Savings account balances (Schedule RC-E Memoranda Item 2.a.(2)) can be distributed across any of the first four time bands with no more than 30 percent of these balances slotted in the 3-7 year time band.

(d) *Time Deposits*. Slot dollar balances of all time deposits, regardless of size, in the time band corresponding to their remaining contractual maturity. These balances should equal sum of items from Schedule RC-E Memoranda Items M.2.b., M.2.c., and M.2.d.

(e) *Foreign Interest-Bearing Deposits*. Interest-bearing deposits in foreign offices, Edge and Agreement subsidiaries and International Banking Facilities (IBFs) (FFIEC 031, RC13.b(2)) should be slotted into the appropriate depository category using the same rules as outlined above.

2. Federal Funds Purchased & Securities Sold for Repurchase

(Schedule R, Items 14.a. and 14.b.)

3. Other Borrowed Funds

Such liabilities include:

- Demand Notes Issued to the U.S. Treasury (Schedule RC, Item 15).
- Other Borrowed Money (Schedule RC, Item 16).
- Mortgage Indebtedness and Obligations Under Capitalized Leases (Schedule RC, Item 17).
- Bank's Liability on Acceptances Executed and Outstanding (Schedule RC, Item 18).
- Subordinated Notes and Debentures (Schedule RC, Item 19).
- Limited-life Preferred Stock and Related Surplus (Schedule RC, Item 22).

4. Total Interest-Bearing Liabilities

Calculated as the sum of Items 1, 2, and 3 above.

V. Noninterest-Bearing Liabilities

1. Demand Deposits

Under the assumption that cash in process of collection and currency and coin balances

are funded by transaction accounts, an amount of demand deposits equal to the cash balances reported in Item I.1. above should be slotted in the shortest time band.

Remaining demand deposit account balances can be distributed across any of the first three time bands with no more than 30 percent of these balances slotted in the 1-3 year time band. This category should also include non-interest-bearing deposits in foreign offices, Edge and Agreement subsidiaries, and IBFs (FFIEC 031, RC 13.b(1)).

2. Other Liabilities

Schedule RC, Item 20.

VI. Total Liabilities

Calculated as the sum of IV.4., V.1. and V.2. above and should equal sum of Schedule RC, Items 21 and 22.

VII. Equity Capital

Calculated by subtracting Total Liabilities (above Item VI) from Total Assets (above Item III).

VIII. Net Off-Balance-Sheet Positions

Off-balance-sheet positions should be reported as either amortizing or non-amortizing based on the cash flow characteristic of the underlying instrument. For example, an interest rate swap whose notional amount decreases by a fixed rate per quarter would be categorized as amortizing. A futures contract whose underlying instrument is a GNMA mortgage-backed security would be similarly categorized.

Report only the net position appropriate for each time band after following the instructions outlined below for each type of instrument.

• Interest Rate Swaps

An interest rate swap contract obligates an institution to both receive and remit interest payments that are based on the notional amount of the swap contract. According to the contract, the institution will either receive fixed-rate and pay floating-rate payments, or it will receive floating-rate and pay fixed-rate payments. To represent the institution's receipt of payments, the notional value of the swap (positive sign) is slotted either according to the maturity of the swap (payments received are fixed) or to the next repricing period (payments received are floating). To represent the institution's obligation to remit payments, the notional value of the swap (negative sign) is also slotted according to its maturity or repricing date depending on whether the payments are fixed or floating. Options on interest rate swaps would be handled similarly, with the option being valued by multiplying the option's current delta by its principal or notional value.

Example: The institution has entered into an interest rate swap contract with another party for a notional amount of \$125 million where the institution receives fixed payments and pays floating payments. The floating-rate resets monthly (thus, the negative \$125 million in the less than or equal to 3-month time band), and the swap matures in two

years (thus, the positive \$125 million in the 1-3 year time band).

Off-balance-sheet item (Dollars in thousands)	Total	<=3 Months	>3 Months <=3 years	>1 Year <=3 years	>3 years <=7 years	>7 years <=15 years
Swaps						
Longs (+)	\$125,000	\$0	\$0	\$125,000	\$0	\$0
Shorts (-)	(125,000)	(125,000)	0	0	0	0
Net Position	0	(125,000)	0	125,000	0	0

• **Futures Contracts, Forward-Rate Agreements, and Firm Commitments to Buy or Sell Loans or Securities**

A futures contract (bought or sold) and a forward-rate agreement (FRA) are slotted in the same manner on the IRR Reporting Schedule using only one entry in the time band corresponding to the maturity of the underlying position. A purchased futures contract is slotted as a positive dollar amount while a sold contract is slotted with a negative sign.

Commitments to buy loans or securities should be slotted as a positive value in the time band corresponding to the maturity of the underlying asset. Conversely, commitments to sell loans or securities should be slotted as a negative value in the time band corresponding to the maturity of the underlying asset.

Example: An institution has sold 10 Treasury bill futures contracts for delivery in one month. Each contract is for a 3-month, \$1,000,000 face amount Treasury bill. The

institution has also purchased 100 Treasury note futures contracts for delivery in one month. Each of these purchased contracts is for \$100,000 face amount of a 5 year Treasury note. The face value of the shorted contracts would be slotted with a negative sign in the less than 3-month time band while the face amount of the purchased contracts would be slotted as a positive value in the 3-7 year time band.

Off-balance-sheet item (Dollars in thousands)	Total	<=3 Months	>3 Months, <=1 year	>1 year, <=3 years	>3 Years, <=7 years	>7 Years, <=15 years
Futures:						
Longs (+)	\$10,000	\$0	\$0	\$0	\$10,000	\$0
Shorts (-)	(\$10,000)	(\$10,000)	0	0	0	0
Net Position	0	(10,000)	0	0	(10,000)	0

• **Options**

The delta equivalent value should be reported for exchange-traded and OTC options (except as outlined below for interest rate caps and floors). The delta represents the change in the value of an option relative to the change in the value of the instrument on which the option is written. An option's

current delta times the notional value equals the delta equivalent value, and this value should be slotted in the time band corresponding to the maturity/repricing period of the underlying instrument. Purchased calls and written puts should be slotted using positive delta notional values while purchased puts and written calls

should be slotted using negative notional values.

Example: An institution bought call options with a delta value of \$56 million on the 2 year Treasury note. A positive amount equal to the delta value is reported in the same time band as the maturity of the underlying instrument (thus, the positive \$56 million in the 1-3 year time band).

Off-balance-sheet item (Dollars in thousands)	Total	<=3 Months	>3 Months, <=1 year	>1 year, <=3 years	>3 Years, <=7 years	>7 Years, <=15 years
Options of Futures:						
Longs (+)	\$56,000	\$0	\$0	\$56,000	\$0	0
Shorts (-)	0	0	0	0	0	0
Net Position	(56,000)	0	0	56,000	0	0

• **Caps, Floors and Collars**

Interest rate caps and floors represent a series of options with consecutive expiration dates equal to the repricing date of the underlying index. Caps represent a series of calls on a short term interest rate, and can be used to create an upper limit on the cost of floating-rate liabilities. Floors are a series of consecutive puts on a short term rate and can be used to protect floating-rate assets from declining rates. Each option in the series could be treated individually using delta weights. Institutions wishing to do so may elect to use such a treatment by reporting the delta weighted average notional value of

caps or floors in the time band corresponding to the delta weighted average maturity of the instrument. Recognizing that most institutions may not be able to report such a treatment, a simpler approach to valuing caps and floors is permitted.

For purchased caps, if the index rate (the underlying rate upon which the cap is based) is within 100 basis points of the cap strike rate (or "in the money") the notional value of the cap (negative sign) is slotted according to the maturity of the cap. In essence, the floating-rate liability is converted into a fixed-rate liability; hence, the negative entry at the longer maturity (long a fixed-rate liability). Purchased caps which are not

within 100 basis points of the cap strike rate are not reported.

For purchased floors, if the index rate is within 100 basis points of the floor strike rate, the nominal value of the floor (positive sign) is slotted according to the maturity of the floor. In essence, the floating-rate asset is converted into a fixed-rate asset; hence, the positive entry at the longer maturity (long a fixed-rate asset).

Collars should be handled by reporting the cap and floor as specified above. Treat each position separately.

Example: An institution purchased a cap with a notional amount of \$10 million which

matures in two years. The index is 3-month London Inter-Bank Offered Rate (LIBOR), which is currently 6 percent and the cap

strike rate is 8.5 percent. A negative notional amount is slotted according to the maturity of

the cap (the negative \$10 million in the 1-3 year time band).

Off-balance-sheet item (Dollars in thousands)	Total	< = 3 Months	> = 3 Months, < = 1 year	> = 1 Year, < = 3 years	> = 3 Years, < = 7 years	> 7 Years < = 15 years
Caps:						
Longs (+)	(\$10,000)	\$0	\$0	(\$10,000)	\$0	\$0
Shorts (-)	\$0	0	0	\$0	0	0
Net Position	(\$10,000)	0	0	(\$10,000)	0	0

Memoranda Items

Under revised supervisory policies on securities activities that became effective on February 10, 1992, institutions must evaluate at least quarterly whether their holdings of high-risk mortgage securities reduce interest rate risk. Institutions should report the current market value of high-risk mortgage derivative products along with their estimated market values for a 100 basis point increase and decrease in market rates in the lines provided. The methodologies used to estimate these changes in market values should be the same as used to conduct the "high-risk mortgage derivative product" tests. The reported data will be used directly in calculating the institution's IRR exposure.

Mortgage derivative securities purchased prior to February 10, 1992, that meet the high-risk tests are subject to previously-existing supervisory policies and are, therefore, not subject to the quarterly IRR risk evaluation criteria. For such holdings, institutions have the option of: (1) Reporting the interest rate sensitivity of these holdings in a similar fashion as post February 10, 1992, purchases, or (2) reporting only the current book value of those securities. Balances reported under the second option would receive high positive risk weights in calculating the institution's exposure.

By order of the Board of Directors, dated at Washington, DC this 28th day of July, 1992.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,
Executive Secretary.

Office of the Comptroller of the Currency.

Dated: July 29, 1992.

Stephen R. Steinbrink,
Acting Comptroller of the Currency.

By Order of the Board of Governors of the Federal Reserve System.

Dated: July 28, 1992.

William W. Wiles,
Secretary of the Board.

[FR Doc. 92-18540 Filed 8-7-92; 8:45 am]

BILLING CODE 4810-33-M, 6210-01-M, 6714-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2 and 284

[Docket No. RM92-13-000]

Revisions to Regulations Governing NGPA Section 311 Construction and the Replacement of Facilities; Proposed Rulemaking

August 3, 1992.

AGENCY: Federal Energy Regulatory
Commission (Commission), DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is proposing to revise its regulations to require a pipeline to notify the Commission 30 days prior to commencing: Any construction, or abandonment with removal of facilities, pursuant to section 311 of the Natural Gas Policy Act of 1978; and any replacement of facilities pursuant to § 2.55(b). The purpose of this rulemaking is to re-promulgate regulations recently vacated on procedural grounds by the U.S. Court of Appeals for the D.C. Circuit in *Tennessee Gas Pipeline Co. v. FERC*, No. 90-1618 (July 14, 1992). Such advance notification would enable the Commission to review these proposed activities before construction commenced and, where warranted, to intervene.

DATES: Comments are due on or before August 25, 1992.

ADDRESSES: An original and 14 copies of written comments must be filed. All filings should refer to Docket No. RM92-13-000 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Paul W. Schach, Office of the General Counsel, Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426, (202) 208-2246.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the *Federal Register*, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208-1397. To access CIPS, set your communications software to use 300, 1200, or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this document will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, located in room 3106, 941 North Capitol Street, NE., Washington, DC 20426.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is proposing regulations to require companies constructing natural gas facilities to transport natural gas pursuant to section 311 of the Natural Gas Policy Act of 1978 (NGPA),¹ or replacing natural gas facilities pursuant to § 2.55(b) of the Commission's regulations, to notify the Commission at least 30 days prior to commencing the construction or replacement activity.

The proposed regulations are virtually identical to those previously adopted as an interim rule in Order No. 525.² That

¹ 15 U.S.C. 3301-3432 (1988).

² Interim Revisions to Regulations Governing Construction of Facilities Pursuant to NGPA Section 311 and Replacement of Facilities, FERC Stats. & Regs., Regulations Preambles 1986-1990 ¶ 30,895, clarified, 52 FERC ¶ 61,252, reh'g denied, 53 FERC ¶ 61,140 (1990).

interim rule recently was vacated by the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) in *Tennessee Gas Pipeline Company v. FERC (Tennessee)*.³ The purpose of this rulemaking proceeding is to re-promulgate the interim rule's 30-day advance notification requirement to enable the Commission to review section 311 construction and § 2.55(b) replacement activities before they commence.

II. Public Reporting Requirement

The Commission estimates the public reporting burden for the collection of information sought in the proposed rule to average approximately four hours per response. It is anticipated that these respondents would submit on average four filings each. The annual reporting burden for the collection of information is estimated to be 880 hours. The industry burden is based on the average number of hours per response for the 55 pipeline companies complying with this filing. This includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, complete and review the collection of information, and file the information with the Commission.

Interested persons may comment on this burden estimate or other aspects of this collection of information, including suggestions for reducing the burden, by sending written comments to the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 [Attention: Mr. Michael Miller, (202) 208-1415], and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission].

III. Background

Section 2.55(b) of the Commission's regulations permits a natural gas pipeline company to replace existing facilities without prior authorization pursuant to section 7(c) of the Natural Gas Act (NGA).⁴ Section 284.3(c) of the regulations provides automatic authorization for the construction of facilities to be used for the transportation of natural gas pursuant to NGA section 311. Section 284.11 requires any pipeline constructing under § 284.3(c) to comply with the terms and conditions of § 157.206(d), involving compliance with the governing environmental statutes and regulations.

On August 2, 1990, the Commission issued an interim rule in Order No. 525,

without notice and comment.⁵ On the same day, it issued a Notice of Proposed Rulemaking (NPR) in a proceeding that has come to be known as the "construction rule" proceeding.⁶

The interim rule required natural gas pipelines to notify the Commission 30 days before commencing any replacement of facilities pursuant to § 2.55(b), or any section 311 construction or abandonment with removal of facilities pursuant to § 284.3(c). The notification must include the following information: (1) A brief description of the facilities; (2) U.S. Geological Survey 7.5-minute series topographic maps showing the location of the facilities; and (3) a description of the procedures to be used for erosion control revegetation and maintenance, and stream and wetland crossings. Additionally, for section 311 construction the pipeline also must provide evidence of having met the Commission's environmental compliance procedures at § 157.106(d) of its regulations.

The purpose of the interim rule was to give the Commission a temporary procedure, pending adoption of a final rule in the construction rule proceeding, for reviewing section 311 construction activities under § 284.3(c), and replacement activities under § 2.55(b), before any construction commenced. The Commission believed that the opportunity for prior review would allow it to take appropriate action where necessary to ensure compliance with the applicable environmental statutes and Commission regulations.⁷

On September 20, 1991, the Commission issued a final rule in the construction rule proceeding, in Order No. 555.⁸ For § 2.55(b) replacement activities, the Commission eliminated the 30-day advance notification requirement but significantly narrowed the definition of exempt replacement activities, and added two new conditions, that together it believed would adequately minimize any potential adverse environmental impacts.⁹

³ The Commission invoked the good cause exception of the Administrative Procedure Act (APA), which permits rulemaking without public notice and comment when an agency "for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. § 553(b)(3)(B) (1988).

⁴ Revisions to Regulations Governing Certificates for Construction, IV FERC Stats. & Regs. ¶ 32,477 (1990). The construction rule proceeding involved numerous matters in addition to the one addressed by the interim rule.

⁵ See Order No. 525, FERC Stats. & Regs., Regulations Preambles 1986-1990, at 31,812.

⁶ Revisions to Regulations Governing Authorizations for Construction of Natural Gas Pipeline Facilities, III FERC Stats. & Regs. ¶ 30,928 (1991).

⁷ Specifically, Order No. 555 defined exempt replacement activities as involving "[f]acilities which have or will soon become physically

For section 311 construction, Order No. 555 adopted, at § 284.11(b) of the regulations, essentially the same 30-day advance notification requirement previously adopted as an interim rule.

Order No. 555 was scheduled to take effect on November 19, 1991, but on November 13, 1991, the Commission postponed the effective date of the rule until 30 days after publication in the *Federal Register* of an order on rehearing.¹⁰ Rehearing currently is pending, thus causing the interim rule adopted in Order No. 525 to remain in effect.

On July 14, 1992, as stated, the D.C. Circuit issued its decision in *Tennessee* vacating the interim rule. The court found that the Commission had "failed to provide a sufficient basis for invoking the good cause exception" of the APA,¹¹ which permits an agency to promulgate regulations without notice and comment under certain circumstances. The court's mandate is scheduled to issue on August 28, 1992. Until it issues, Order No. 525's interim rule remains in effect. When the mandate issues, the pre-Order No. 525 regulations will be reinstated.

IV. Discussion of the Proposed Regulations

The Commission is mandated by the National Environmental Policy Act of 1969 (NEPA)¹² to weigh carefully the potential environmental impact of its decisions.¹³ Section 311 construction activities are subject to the environmental requirements at § 157.206(d) of the regulations, which enable the Commission to meet its obligations under the various environmental statutes and regulations. As discussed below, § 2.55(b) replacement activities are not subject to the § 157.206(d) environmental requirements. Nevertheless, for the reasons stated therein, we reaffirm our finding in Order No. 525 that it is necessary for the Commission to receive

deteriorated or obsolete to the extent that replacement is deemed advisable to comply with Department of Transportation regulations In addition, the final rule required that: (1) Service through the replaced facilities not result in a reduction or abandonment of service; (2) the new facilities have a substantially equivalent designed delivery capacity as the old facilities; (3) the replacement occur within the pipeline's existing right-of-way; and (4) the old facilities be abandoned in compliance with the guidelines of the U.S. Environmental Protection Agency for facilities exposed to PCB contamination greater than 50 ppm.

¹⁰ Revisions to Regulations Governing Authorizations for Construction of Natural Gas Pipeline Facilities, III FERC Stats. & Regs. ¶ 30,928A (1991).

¹¹ *Tennessee*, slip op. at 2.

¹² 42 U.S.C. 4321-4370c (1988).

¹³ Order No. 525, FERC Stats. & Regs., Regulations Preambles 1986-1990, at 31,812-813.

⁸ No. 90-1618 (July 14, 1992).

⁹ 15 U.S.C. 717-717z (1988).

advance notification of proposed construction activities under section 311, as well as proposed replacement activities under § 2.55(b).¹⁴

Originally, the Commission believed that only very minor facilities, such as taps and interconnections, would be constructed under section 311, and that stringent Commission review was therefore unnecessary. The Commission did not anticipate that extensive facilities would be constructed under section 311. However, in actuality, pipelines have viewed section 311 as a vehicle for constructing more extensive projects.¹⁵ In several instances, such construction has presented potentially serious environmental repercussions.¹⁶ Without advance notification of section 311 construction projects, the Commission has no established means, other than through the press, of being informed of potential environmental harm resulting from such construction.

Like section 311 construction, the replacement of facilities under § 2.55(b) may be extensive. However, § 2.55(b) was adopted over 40 years ago.¹⁷ At that time, there were fewer pipeline construction projects and the majority of those projects involved relatively short lengths of small diameter pipeline. Since then, an integrated and sophisticated national pipeline grid has developed. Today, the replacement of facilities can involve hundreds of miles of large diameter pipeline. And the environment where a pipeline originally was laid may very well have changed completely by the time replacement is necessary.¹⁸ For these reasons, we believe that advance notification of § 2.55(b) replacement projects is as necessary as advance notification of section 311 construction projects.

Accordingly, we are proposing to re-adopt the 30-day advance notification requirement that the D.C. Circuit recently struck down on procedural grounds in *Tennessee*. Specifically, the proposed rule would require a pipeline to notify the Commission 30 days prior to commencing: (1) any section 311 construction, or abandonment with removal of facilities, pursuant to § 284.3(c) of the regulations; and (2) any

replacement of facilities pursuant to § 2.55(b). Such advance notification would enable the Commission to review planned activities before construction commenced and, where warranted, to intervene.

Concerning section 311 construction, the advance notification requirement would apply to both interstate and intrastate pipelines proposing such construction. Under § 284.11 of the regulations, an intrastate pipeline constructing facilities to be used for section 311 transactions always has been held to the same environmental standards as an interstate pipeline in like circumstances.¹⁹

Under proposed § 284.11(b), then, the advance notification of section 311 construction would include the following information:

- (1) A brief description of the facilities to be constructed or replaced (including pipeline size and length, compression horsepower, design capacity, and cost of construction);
- (2) Evidence of having complied with each of the environmental terms and conditions contained in § 157.206(d) of the regulations;
- (3) U.S. Geological Survey 7.5-minute series topographical maps showing the location of the facilities; and
- (4) A description of the procedures to be used for erosion control, revegetation and maintenance, and stream and wetland crossings.

Under proposed § 2.55(b), the advance notification of proposed replacement activities would include the information described in (1), (3), and (4) above. Because § 2.55(b) does not require compliance with § 157.206(d), we would not require pipelines undertaking replacement activities to produce evidence of having complied with that section.

In this regard, we note that the replacement of facilities pursuant to § 2.55(b) is an activity that is categorically excluded from the general environmental review process. Under § 380.4(b) of our regulations, however, where certain circumstances are present the Commission may require the submission of an environmental report or the preparation of an Environmental Assessment (EA) or Environmental Impact Statement (EIS). We emphasize that we do not intend the proposed 30-day advance notification requirement to be tantamount to a determination that an EA or EIS automatically will be required for all categorically excluded

replacement facilities. Rather, the information submitted as notification merely would provide the Commission with a basis for reviewing individual projects to determine whether additional environmental review was appropriate in a particular instance.

Because a pipeline might be unable to determine precisely before pigging or hydrostatic testing what portions of a pipeline needed to be replaced, a pipeline could submit, before it began pigging and testing, its 30-day advance notification of a § 2.55(b) replacement activity. In that notification, it would have to: (1) identify and describe the portion of the line it intended to inspect; (2) provide the Commission with a list of repairs, organized by type of repair, that might be required; (3) provide the topographical maps covering the length of pipeline to be inspected and on which repairs would occur if necessary; (4) describe generally the procedures it would initiate to manage erosion control, revegetation and maintenance, and stream and wetland crossings; and (5) make a good faith estimate of the length of pipe to be replaced and the cost thereof.²⁰

We do not believe that any of the information proposed to be required in the advance notification of section 311 construction and § 2.55(b) replacement activities would be burdensome. All of the information should be readily available to the pipeline. Any minor inconvenience to the pipeline that might be caused by the preparation of the advance notification would be negligible when notification would be negligible when measured against the environmental concerns that we are seeking to protect.

Further we do not believe that requiring pipelines to notify the Commission 30 days before commencing section 311 construction and § 2.55(b) replacement activities would be onerous, principally because most such

²⁰ There is one circumstance, however, where a pipeline could precisely notify the Commission of the facilities to be replaced before it began replacement activities. The U.S. Department of Transportation (DOT) has implemented regulations, at 49 CFR 192.607-192.629, that prescribe minimum requirements for the operation of pipeline facilities. These regulations are complex but, in essence, require that pipelines operate at varying percentages of maximum operating pressures depending on the population density around the pipeline and that, as population increases in the vicinity of a pipeline the operating pressure must be decreased or the wall thickness of the pipeline increased. In situations where population density increases and the pipeline decides to replace the pipe with activities it will perform. Under these circumstances, we would require the pipeline to describe precisely in its 30-day notification the facilities to be replaced.

¹⁴ *Id.*, at 31,813.

¹⁵ See, e.g., *Arkla Energy Resources*, a Division of Arkla, Inc., 54 FERC ¶ 61,033 (1991), where the Commission granted Arkla NGA section 7(c) authority to operate Line AC, a large diameter, 225-mile pipeline that Arkla previously had constructed pursuant to NGA section 311.

¹⁶ See, e.g., *Questar Pipeline Co.*, 57 FERC ¶ 61,058 (1991), 58 FERC ¶ 61,157 (1992); *Transcontinental Gas Pipe Line Corp.*, 48 FERC ¶¶ 61,132 and 61,189 (1989).

¹⁷ See Order No. 148, 14 FR 681 (Feb. 16, 1949).

¹⁸ For example, what was once a rural area may now be densely populated.

¹⁹ See Interim Revisions to Regulations Governing Construction of Facilities Pursuant to NGA Section 311 and Replacement of Facilities, 53 FERC at 61,471.

activities are scheduled in advance of that time. However, we emphasize that the proposed 30-day advance notification requirement would not conflict with the obligation placed on pipeline operators by DOT's regulations that require operators to take prompt action to correct safety related conditions. The proposed rule would not override other Commission regulations that permit interstate pipelines to take prompt corrective actions to address conditions that constitute a safety hazard. Subpart I of part 284 of the Commission's regulations exempts emergency situations from the provisions of NGA section 7 and permits a pipeline to take immediate action to alleviate an emergency situation, subject to a subsequent 48-hour reporting requirement. Thus, in an emergency situation, as defined by the Commission,²¹ a pipeline could take immediate remedial action without regard to the proposed 30-day advance notification requirement.

Additionally, upon an appropriate petition by a pipeline the Commission would consider waiving the 30-day advance notification requirement where warranted to avoid an undue delay or interruption in replacement activities.²² And a pipeline also may be able to perform a replacement activity under its part 157, subpart F blanket construction certificate if the activity involves an eligible facility, as defined at § 157.202(b)(2) of the regulations.

We realize that the regulation we are proposing here as § 2.55(b) is somewhat different from the one we adopted in Order No. 555 (which we described above, and which was stayed pending rehearing generally of Order No. 555). Nevertheless, we believe that the purpose and ultimate result of both versions of § 2.55(b) are substantially the same—to protect the environment. We are proposing the instant regulation here because the rehearing of Order No. 555 is pending, and because we need to react quickly to the court's decision in *Tennessee* to ensure that a mechanism is in place to enable us to review both section 311 construction and § 2.55(b)

replacement activities. We will not consider in this proceeding any of the issues raised on rehearing of Order No. 555 concerning the § 2.55(b) regulation adopted there. Those issues we will address at the appropriate time in that proceeding.

We note that the regulations that we are proposing here would take effect, if adopted, 30 days after a final rule is published in the Federal Register. If, as expected, the court's mandate in *Tennessee* issues on August 28, 1992, Order No. 525's interim rule will be vacated prior to this final rule's taking effect here. During the intervening hiatus, the governing regulations will be those in effect prior to Order No. 525.²³

The Commission still has a vital interest in section 311 construction and § 2.55(b) replacement activities taking place during the hiatus. While advance notification of such projects is not required, we are proposing, at § 2.55(b)(2) and § 284.11(c) of the regulations, to require pipelines to submit, within 30 days of the effective date of a final rule in this proceeding, a report informing the Commission of all such construction commenced during the hiatus. This one-time report is intended to avoid a gap in the Commission's knowledge of such projects.

V. Environmental Analysis

Commission regulations require that an EA or EIS be prepared for any Commission action that may have a significant adverse effect on the human environment.²⁴ The Commission has categorically excluded certain actions from these requirements on the ground that they do not have a significant effect on the human environment.²⁵

²² The governing regulations will be:

§ 2.55 Definition of term used in section 7(c). For purposes of section 7(c) of the Natural Gas Act, as amended, the word "facilities" as used therein shall be interpreted to exclude: * * *

(b) *Replacement of facilities.* Facilities which constitute the replacement of existing facilities which have or will soon become physically deteriorated or obsolete to the extent that replacement is deemed advisable: *Provided*, That such replacement will not result in a reduction or abandonment of service rendered by means of such facilities: *Provided further*, That such replacement shall have substantially equivalent designed delivery capacity as the particular facilities being replaced.

§ 284.11 Environmental compliance. any authorization granted under Subparts B, C and H of this part that involves construction or abandonment with removal of facilities is subject to the terms and conditions of § 157.206(d) of this chapter.

²⁴ See Order No. 486, Regulations Implementing National Environmental Policy Act of 1969, FERC Stats. & Regs., Regulations Preambles 1986-1990 § 30.763 (1987); 18 CFR part 380.

²⁵ See 18 CFR 380.4.

The proposed rule, if adopted, would require a pipeline to notify the Commission prior to commencing certain construction activities. However, the proposed rule would not alter the inherent nature of the activities or their impact upon the human environment. Accordingly, an EA is unnecessary and will not be prepared.

VI. Regulatory Flexibility Act Certification

When the Commission is required by section 553 of the APA²⁶ to publish a NOPR, it also is required by section 603 of the Regulatory Flexibility Act of 1980 (RFA)²⁷ to prepare and make available for public comment an initial regulatory flexibility analysis, unless the Commission certifies, pursuant to the RFA, that the proposed rule would not have a "significant economic impact on a substantial number of small entities."²⁸ The RFA is intended to ensure careful and informed agency consideration of rules that may significantly affect small entities and to encourage consideration of alternative approaches to minimize harm or burdens on small entities.

We do not believe that this proposed rule, if adopted, would have a significant economic impact, within the meaning of the RFA, on a substantial number of small entities, largely because we do not believe that most of the entities that would be affected by it fall within the RFA's definition of "small entity."²⁹ However, even if the proposed rule, if adopted, were to affect a substantial number of small entities, we do not believe that its impact would be substantial. Both the time needed to prepare an advance notification and the cost of doing so would be modest.

VII. Information Collection Requirements

The regulations of the Office of Management and Budget (OMB) require that OMB approve certain information collection requirements imposed by agency rules.³⁰

The information collection form that would be affected by the proposed rule is FERC-577(A), Gas Pipeline Certificates: Environmental Impact

²⁶ 5 U.S.C. 553 (1988).

²⁷ 5 U.S.C. 601-612 (1988).

²⁸ 5 U.S.C. 605(b) (1988).

²⁹ Section 601 of the RFA defines "small entity" as a small business, a small not-for-profit enterprise, or a small governmental jurisdiction. In turn, a "small business" is defined by reference to section 3 of the Small Business Act as an enterprise which is "independently owned and operated and which is not dominant in its field of operation." 15 U.S.C. 632(a) (1988).

³⁰ 5 CFR part 1320.

²¹ Section 284.262(a)(1)(iii) of Subpart I defines emergency as "[a]ny situation in which the participant, in good faith, determines that immediate action is required or is reasonably anticipated to be required for the protection of life or health or for maintenance of physical property."

²² The Commission has granted dozens of waivers of the interim rule's 30-day advance notification requirement. See, e.g., Panhandle Eastern Pipe Line Co., 58 FERC ¶ 61,015 (1992); Northern Natural Gas Co., 57 FERC ¶ 61,092 (1991); Transwestern Pipeline Co., 57 FERC ¶ 61,114 (1991); Williams Natural Gas Co., 57 FERC ¶ 61,229 (1991); National Fuel Gas Supply Corp., 57 FERC ¶ 61,352 (1991).

Statement. (1902-161). This information collection is required to enable the Commission to carry out its legislative mandate under the NGA, NGPA, and NEPA. As previously discussed, the information required by the proposed rule, if adopted, would permit the Commission to review and take action, where necessary, prior to certain construction and replacement activities.

An estimated 55 respondents would be affected by the proposed rule, if adopted. The respondents would consist mostly of large interstate pipeline companies (approximately 50), with a few (approximately 5) medium to large intrastate pipeline companies.

As stated, the public reporting burden with respect to the proposed environmental filing requirements (FERC-577(A)) is estimated to average approximately four burden hours per response.

VIII. Comment Procedures

The Commission invites interested persons to submit written comments on the matters proposed in this NOPR. An original and 14 copies of the written comments must be filed with the Commission no later than 15 days after publication of this NOPR in the *Federal Register*. In light of the need to adopt a final rule as quickly as possible after the court's mandate in *Tennessee* issues, and given the industry's and public's significant experience operating under these regulations, reply comments will not be permitted and no extension of the comment period will be granted.

Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, and should refer to Docket No. RM92-13-000. All written comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room, room 3104, 941 North Capitol Street, NE., Washington, DC 20426, during regular business hours.

List of Subjects

18 CFR Part 2

Administrative practice and procedure, electric power, environmental impact statements, natural gas, pipelines, reporting and recordkeeping requirements.

18 CFR Part 284

Continental shelf, natural gas, reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission proposes to amend parts 2

and 284 of chapter I, title 18, *Code of Federal Regulations*, as set forth below.

By direction of the Commission,
Lois D. Cashell,
Secretary.

PART 2—GENERAL POLICY AND INTERPRETATIONS

1. The authority citation for part 2 continues to read as follows:

Authority: 15 U.S.C. 717-1717w, 3301-3432; 16 U.S.C. 792-825r, 2601-2645; and 42 U.S.C. 4321-4361, 7101-7352.

2. In § 2.55, paragraph (b) is revised to read as follows:

§ 2.55 Definition of terms used in section 7(c) * * *

(b) Replacement of facilities.

(1) Facilities which constitute the replacement of existing facilities that have or will soon become physically deteriorated or obsolete, to the extent that replacement is deemed advisable, if:

(i) The replacement will not result in a reduction or abandonment of service through the facilities;

(ii) The replacement facilities will have a substantially equivalent designed delivery capacity as the particular facilities being replaced; and

(iii) At least 30 days prior to commencing any related construction or replacement activity, the company files notification of such activity with the Commission. The notification must include the following information:

(A) A brief description of the facilities to be replaced (including pipeline size and length, compression horsepower, design capacity, and cost of construction);

(B) U.S. Geological Survey 7.5-minute series topographic maps showing the location of the facilities to be replaced; and

(C) A description of the procedures to be used for erosion control, revegetation and maintenance, and stream and wetland crossings.

(2) For any replacement activity authorized under § 2.55(b) of this chapter and commenced between August 28, 1992 and _____, 1992 [the effective date of a final rule in this proceeding], a pipeline must file a one-time report with the Commission, by _____, 1992 [30 days after the effective date of a final rule in this proceeding], that includes all of the information required in paragraph (b)(1)(iii) of this section.

* * * * *

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

3. The authority citation for part 284 is revised to read as follows:

Authority: 15 U.S.C. 717-717z; 15 U.S.C. 3301-3432; 42 U.S.C. 7101-7352; 43 U.S.C. 1331-1356.

4. Section 284.11 is revised to read as follows:

§ 284.11 Environmental compliance.

(a) Any authorization granted under Subpart B or C of this Part that involves the construction of, or the abandonment with removal of, facilities is subject to the terms and conditions of § 157.206(d) of this chapter.

(b) At least 30 days prior to commencing any construction or abandonment with removal of facilities, as authorized under subpart B or C of this part and described in paragraph (a) of this section, the company must file notification of such activity with the Commission. The notification must include the following information:

(1) A brief description of the facilities to be constructed or abandoned with removal of facilities (including pipeline size and length, compression horsepower, design capacity, and cost of construction);

(2) Evidence of having complied with each provision of § 157.206(d) of this chapter;

(3) U.S. Geological Survey 7.5-minute series topographical maps showing the location of the facilities; and

(4) A description of the procedures to be used for erosion control, revegetation and maintenance, and stream and wetland crossings.

(c) For any construction or abandonment with removal of facilities, as authorized under subpart B or C of this part and described in paragraph (a) of this section, that is commenced between August 28, 1992 and _____, 1992 [the effective date of a final rule in this proceeding], a company must file a one-time report with the Commission, by _____, 1992 [30 days after the effective date of a final rule in this proceeding], that includes all of the information required in paragraph (b) of this section.

[FR Doc. 92-18848 Filed 8-7-92; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

Consolidation of Norfolk and Newport News, and Richmond-Petersburg, Virginia, for Marine Purposes

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule, solicitation of comments.

SUMMARY: This document proposes to amend the Customs Regulations to consolidate the ports of entry of Norfolk and Newport News, and Richmond-Petersburg, Virginia for marine purposes only. This change, if adopted, would enable Customs to obtain more efficient use of its personnel, facilities and resources. It would eliminate duplication of port functions and permit better control of staffing resources without impairing services to area businesses or the general public. Moreover, it would simplify vessel entry and clearance procedures and reduce expenses and paperwork for all parties involved thereby enabling Customs to provide better and more economical service to carriers, importers, and the public.

DATES: Comments must be received on or before October 9, 1992.

ADDRESSES: Comments (preferable in triplicate) may be submitted to and inspected at the Regulations and Disclosure Law Branch, U.S. Customs Service, room 2119, 1301 Constitution Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Margaret Reyen, Office of Workforce Effectiveness and Development, Office of Inspection and Control, U.S. Customs Service, (202) 566-8157.

SUPPLEMENTARY INFORMATION:**Background**

As part of its continuing program to obtain more efficient use of its personnel, facilities and resources, and to provide better service to carriers, importers and the public, Customs proposes to amend § 101.3, Customs Regulations (19 CFR 101.3), by consolidating, for marine purposes only, the port of entry of Norfolk and Newport News, and the port of entry of Richmond-Petersburg, Virginia, located in the Norfolk District in the Southeast Region.

Inasmuch as these two ports are located within approximately seventy-five miles of one another on the James and Elizabeth Rivers, it is estimated that the proposed consolidation will

significantly reduce expenses for the public without impairing Customs ability to provide services to area businesses or to the general public.

Under this proposal, the laws and regulations administered and enforced by Customs relating to the entry of merchandise would continue to apply at Norfolk and Newport News and at Richmond-Petersburg, with each of the ports retaining its port codes as well as its current geographical limits. However, the two ports would be considered to be one port for the purposes of the navigation laws. All of the requirements prescribed by the navigation laws administered and enforced by Customs, such as reporting arrival and making formal entry of vessels arriving at the consolidated marine port from a foreign or another U.S. port (depending on the vessel's nationality); and obtaining a permit to proceed between the consolidated port and other U.S. ports, would have to be complied with, as is not the case in existing consolidated ports.

It is anticipated that the proposed consolidation also will result in reducing penalties incurred under the navigation laws if carriers fail to enter and properly clear merchandise being shipped in a residue cargo movement within the consolidated marine port (i.e., the port of Norfolk and Newport News, and the port of Richmond-Petersburg), and will reduce paperwork for carriers, importers, and Customs, because of the reduction of penalty cases.

If this proposal is adopted, there would be no change in the current geographical limits of either port. However, it will be necessary to amend the list of Customs regions, districts, and ports of entry set forth in § 101.3(b), Customs Regulations (19 CFR 101.3(b)), to reflect the consolidation of these ports for the purposes of the navigation laws.

Comments

Before adopting this proposal, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations and Disclosure Law Branch, room 2119, U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, DC 20229.

Authority: This change is proposed under the authority of 5 U.S.C. 301 and 19 U.S.C. 2, 66 and 1624.

Regulatory Flexibility Act and Executive Order 12291

Customs routinely establishes, expands, and consolidates Customs ports of entry throughout the United States to accommodate the volume of Customs-related activity in various parts of the country. Although this document is being issued with notice for public comment, it is not subject to the notice and public procedure requirements of 5 U.S.C. 553 because it relates to agency management and organization. Accordingly, this document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this document relates to agency organization and management, it is not subject to E.O. 12291.

Drafting Information

The principal author of this document was Peter T. Lynch, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

Approved: July 24, 1992.

Carol Hallett,

Commissioner of Customs.

Nancy L. Worthington,

Acting Assistant Secretary of the Treasury.

[FR Doc. 92-18850 Filed 8-7-92; 8:45 am]

BILLING CODE 4820-02-M

19 CFR Part 146

Petroleum Refineries in Foreign Trade Subzones

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations by adding special procedures and requirements governing the operations of crude petroleum refineries approved as foreign trade subzones, in implementation of section 9002 of the Technical and Miscellaneous Revenue Act of 1988, which amended the Foreign Trade Zones Act, to make specific provision for petroleum refinery subzones.

DATES: Comments must be received on or before October 9, 1992.

ADDRESSES: Comments (preferably in triplicate) must be submitted to and may be inspected at the Regulations and Disclosure Law Branch, U.S. Customs

Service, 1301 Constitution Avenue, NW., room 2119, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT:

Legal aspects: Carl Berdud, Entry Rulings Branch (202-566-5856).

Operational aspects: Louis Hryniw, Office of Regulatory Audit (202-566-2812).

SUPPLEMENTARY INFORMATION:

Background

The Foreign Trade Zones Act of 1934, as amended (19 U.S.C. 81a-u) ("the FTZA"), provides for the establishment and regulation of foreign trade zones, the purpose of which is to attract and promote international trade and commerce. Part 146, Customs Regulations (19 CFR part 146), governs the admission of merchandise into a zone, its removal from the zone, and, among other things, its manipulation, manufacture, or exhibition while in the zone.

Under the FTZA, the Foreign Trade Zones (FTZ) Board has authority to grant to public and private corporations, as defined in 19 U.S.C. 81a (e) and (f), the privilege of establishing, operating, and maintaining foreign trade zones in or adjacent to Customs ports of entry. 19 U.S.C. 81b(a). This Board, in 1952, promulgated regulations under 19 U.S.C. 81h to allow the establishment of "zones for specialized purposes" or "subzones" in areas distinct from existing general purpose zones "for one or more of the specialized purposes of storing, manipulating, manufacturing or exhibiting goods," should the Board determine that existing general purpose zones would not satisfactorily serve the convenience of commerce in relation to the proposed purposes. 17 FR 5316 (June 11, 1952).

Generally, under section 3 of the Act, as amended, 19 U.S.C. 81c(a), imported and domestic merchandise may be brought into a zone for the purposes enumerated without being subject to the Customs laws of the U.S., but if imported merchandise is so sent from a zone into Customs territory, it would then be subject to the laws and regulations of the U.S. affecting such merchandise.

More specifically, the first proviso to 19 U.S.C. 81c(a) provides that foreign merchandise in a zone, which has not been manipulated or manufactured so as to effect a change in tariff classification, may be taken under Customs supervision and be appraised and its taxes determined and duties liquidated or fixed thereon. Such merchandise is administratively characterized as "privileged foreign". 19 CFR 146.41. If this merchandise is manufactured in the

zone, duties and taxes are payable on the quantity of such merchandise used in the manufacture of the entered article, with due allowance for recoverable and irrecoverable waste. Furthermore, where two or more products result from the manufacture of privileged foreign merchandise in a zone, the liquidated duties and determined taxes must be distributed to the resulting products in accordance with their relative value upon their respective separation in the manufacturing process, again with due allowance for waste.

In addition, the second proviso to 19 U.S.C. 81c(a) provides in effect that foreign merchandise which has been imported, duty-paid or duty-free, and merchandise which is the growth, product or manufacture of the U.S., may be taken into a zone from the Customs territory, placed in "domestic" zone status, 19 CFR 146.43, and, regardless of whether it has been used in manufacture in the zone, could be subsequently brought back into Customs territory free of duty. In this connection, however, under the third proviso to 19 U.S.C. 81c(a), domestic status merchandise which loses its identity as such in a zone would be treated as foreign, and be subject to duty accordingly, upon reentry into Customs territory.

Hence, an article manufactured from domestic status merchandise in a zone, as noted above, would only be entitled to be removed therefrom, duty-free, if the specific physical content resulting from the domestic merchandise could be established therein. Likewise, the first proviso to 19 U.S.C. 81c(a) fairly requires that the entered article be specifically and strictly identified with particular privileged foreign merchandise for duty assessment to be permissible in accordance therewith, and, as already stated, where more than one product is separated from such merchandise, the manufacturer must calculate the relative value of such products at the time they are separated from the whole, in order to distribute the duty and taxes thereto on this basis.

The foregoing provisions worked well with durable goods where one could physically observe the manufacturing process and count its products/by-products. In recent years, however, oil refineries have increasingly been approved by the FTZ Board to operate as special-purpose zones or subzones. In this regard, the distillation of crude petroleum and derivatives thereof, called feedstocks, presents a unique challenge in that the process is masked from view and involves liquids which change volume and weight. Also, the nature of petroleum is such that multiple products can be concurrently refined

from various feedstocks, thereby further complicating the matter of duty assessment.

In this context, the first and second provisos, as outlined, essentially impeded the efforts of Customs and refiners alike to develop inventory methods (1) which could account for or attribute domestic or privileged foreign merchandise as being used to produce petroleum products removed from a subzone refinery, and (2) which could practicably establish the relative value of multiple products separated from given privileged foreign status merchandise, with duty assessment accordingly.

As a result, to address this situation, § 9002 of the Technical and Miscellaneous Revenue Act of 1988, enacted in Public Law 100-647, amended the FTZA, by adding a special provision, codified as 19 U.S.C. 81c(d), to deal with the unique problems posed by oil refinery subzones. This special provision states that in regard to the calculation of relative values in the operations of petroleum refineries in a foreign trade zone, the time of separation is defined as the entire manufacturing period. The price of products required for computing relative values shall be the average per unit value of each product for the manufacturing period. Definition and attribution of products to feedstocks for petroleum manufacturing may be either in accordance with Industry Standards of Potential Production on a Practical Operating Basis as verified and adopted by the Secretary of the Treasury (known as producibility) or such other inventory control method as approved by the Secretary that protects the revenues.

The amendment thus redefines the time of separation, with respect to the refining of multiple products, as the entire manufacturing process from which they are produced. As such, the amendment obviates the need to determine exactly when and where in the pipeline crude and other feedstocks introduced into the refining process become another product. Rather, it permits refiners as well as Customs to assess relative value at the end of the entire manufacturing period from which such products were produced, when the actual quantities of products resulting from the process, such as kerosene, diesel oil, gasoline, and the like, can be measured with certainty.

Moreover, the amendment permits the products refined in a subzone during a manufacturing period to be attributed to given crude or other feedstocks introduced into production during the period, to the extent that such products

were producible (could have been produced) therefrom in the quantities removed from the subzone. This inventory method, known as producibility, calls for objective production standards to govern its application. Such standards, called industry standards of potential production on a practical operating basis, have already been established and adopted, for petroleum drawback purposes, and published in T.D. 66-16. For example, according to T.D. 66-16, the percentage of motor gasoline producible from a stated quantity of class III crude petroleum (defined by American Petroleum Institute (API) specific gravity ranges) is 91%.

Accordingly, to further define, elaborate upon, and implement, the provisions of 19 U.S.C. 81c(d), concerning petroleum refinery subzones, this rulemaking has been initiated, which proposes to add a new subpart H to the Customs foreign trade zone regulations in part 146 (19 CFR part 146).

Customs is also interested in public comments regarding a specific definition for what constitutes a "petroleum refinery", for purposes of the proposed subpart H. To this end, commenters should provide reasons in support of any recommended definitions.

Comments

Before adopting this proposal, consideration will be given to any written comments (preferably in triplicate) that are timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), during regular business days between the hours of 9 a.m. and 4:30 p.m., at the Regulations and Disclosure Law Branch, room 2119, Customs Headquarters, 1301 Constitution Avenue, NW., Washington, DC.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is hereby certified that the proposed amendments set forth in this document, if adopted, will not have a significant economic impact on a substantial number of small entities. Accordingly, they are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in section 1(b) of E.O. 12291. Accordingly, a

regulatory impact analysis is not required.

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking is in §§ 146.93-146.99. The respondents would be businesses.

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the U.S. Customs Service at the address previously specified.

Estimated total annual reporting and/or recordkeeping burden:

Estimated average annual burden per respondent and/or recordkeeper:

Estimated number of respondents and/or recordkeepers:

Estimated annual frequency of responses:

Part 178, Customs Regulations (19 CFR part 178), which lists the information collections contained in the regulations and control number assigned by OMB would be amended accordingly if the proposal is adopted.

Drafting Information

The principal author of this document was Russell Berger, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 146

Customs duties and inspection, Exports, Foreign trade zones, Imports, Reporting and recordkeeping requirements.

Proposed Amendment

It is proposed to amend part 146, Customs Regulations (19 CFR part 146), as set forth below.

PART 146—FOREIGN TRADE ZONES

1. The general authority citation for part 146 would continue to read as follows:

Authority: 19 U.S.C. 66, 81a-u, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1623, 1624.

2. It is proposed to amend part 146 by adding a new subpart H thereto to read as follows:

Subpart H—Petroleum Refineries in Foreign Trade Subzones

Sec.

- 146.91 Applicability.
- 146.92 Definitions.
- 146.93 Inventory control and recordkeeping system.
- 146.94 Records concerning establishment of manufacturing period.
- 146.95 Feedstock inventories.
- 146.96 Subzone activity reports.
- 146.97 Producibility.
- 146.98 Relative value.
- 146.99 Methods of attribution.

Subpart H—Petroleum Refineries in Foreign Trade Subzones

§ 146.91 Applicability.

This subpart applies only to a petroleum refinery engaged in refining petroleum in a foreign trade subzone. This subpart also applies only to merchandise (crude petroleum and derivatives thereof) which are introduced into production in a refinery subzone. Further, the provisions relating to zones generally, which are set forth elsewhere in this part, including documentation and document retention requirements, and entry procedures, such as weekly entry, shall apply as well to a refinery subzone, insofar as applicable to and not inconsistent with the specific provisions of this subpart.

§ 146.92 Definitions.

The following definitions are applicable to this Subpart H:

(a) *Assay*. "Assay" means the recorded specifications of a feedstock received by a refiner. It constitutes the analysis of crude petroleum or other feedstock in terms of American Petroleum Institute (API) specifications, and includes the expected yields of final products therefrom under each refiner's anticipated operating conditions.

(b) *Attribution*. "Attribution" means the association of a final product with its source material by application of the producibility concept, using the industry standards of potential production set forth in T.D. 66-16, or other inventory control method approved by Customs.

(c) *Cumulative entry activity report*. "Cumulative entry activity report" means the report which shows the cumulative entry activity for each feedstock received into the subzone to date including duties and user fees paid or avoided thereon.

(d) *Duty and user fee report*. "Duty and user fee report" means the report which shows the duty and user fees paid or avoided by receipt and type of entry for the period covered by the report.

(e) *Feedstock*. "Feedstock" means crude petroleum or intermediate product

(including blendstock) that is used in a subzone refinery.

(f) *Final product.* "Final product" means any petroleum derivative listed in T.D. 66-16 that is produced in the refinery subzone and thereafter removed therefrom.

(g) *Fungible merchandise.* "Fungible merchandise", as defined in § 146.1(b)(14) of this part, is further defined as merchandise which has comparable assay reports and anticipated intermediate yields.

(h) *Inventory disposition report.* "Inventory disposition report" means the report which shows the activity for each feedstock receipt for the period covered by the report. All information will be in relative value equivalent feedstock volumes.

(i) *Manufacturing period.* "Manufacturing period" means the period beginning with the introduction of feedstock into the production process and ending with the removal of the final product from the subzone. "Manufacturing period" coincides with "time of separation" (see § 146.92(p)).

(j) *Price of products.* "Price of products" means the average per unit market value of each final product for a given manufacturing period.

(k) *Producibility.* "Producibility" means the industry standards of potential production on a practical operating basis, as approved by Customs and published in T.D. 66-16.

(l) *Product shipment report.* "Product shipment report" means the report which shows, by type of entry, the quantity of final products which are shipped from the subzone for the period covered by the report.

(m) *Protection of the revenue.* "Protection of the revenue" means an accounting method under which any deviation from actual events is resolved in favor of Customs collection and retention of revenue.

(n) *Relative value.* "Relative value" means the value of a final product divided by the total value of all final products produced from a given feedstock. Where two or more products result from the manufacture of a privileged foreign feedstock in a subzone, the liquidated duties and determined taxes thereon shall be distributed to the several products in accordance with their relative value at the time of separation.

(o) *Stock in process.* "Stock in process" means intermediate products which are carried over from one manufacturing period to the next, and includes products which were reintroduced into the refining process before removal from the refinery subzone as a final product.

(p) *Time of separation.* "Time of separation" means the period beginning with the start of production and ending with the removal of the final product from the refinery subzone. The "time of separation" of a final product coincides with its "manufacturing period" (see § 146.92(i)).

(q) *Unique identifier.* "Unique identifier", as defined in § 146.1(b)(19) of this part, must include:

(1) An alpha digit denoting zone status. Domestic feedstock shall be denoted with the letter "D", privileged foreign feedstock with the letter "P", nonprivileged foreign feedstock with the letter "N", and zone-restricted feedstock with the letter "Z" and,

(2) A six-digit number showing the date of receipt (month, day, and year).

§ 146.93 Inventory control and recordkeeping system.

(a) *General.* The refiner must maintain an inventory control and recordkeeping system on a current basis, in conformance with this subpart and the applicable requirements of subpart B of this part. Records for each receipt shall be kept by class, type and unique identifier for each receipt or foreign and domestic feedstock.

(1) *Unique identifier.* Once the numerical sequence of the date of receipt contained in the unique identifier is selected (see § 146.92(q)), the refiner must use this sequence consistently.

(2) *Audit trail.* The records must provide a clear audit trail, showing the actual movement of feedstock through each stage of the inventory and refining process, that is, from admission, through introduction to the distillation or processing unit, to the removal of the final product from the subzone.

(b) *Foreign status feedstock.*—(1) *Admission to subzone.* The subzone refiner shall prepare and file with the district director an application and permit for admission on Customs Form 214 for each receipt of foreign status feedstock, giving its date of admission, the type and class of feedstock admitted, and assigning a unique identifier to it. The admission form for each receipt of foreign status feedstock must also include at least the following additional information:

(i) The estimated or actual total quantity received (in barrels), and temperature converted to a weight measurement;

(ii) Country of origin;

(iii) Cost per barrel (supported by an invoice);

(iv) Harmonized Tariff Schedule of the United States (HTSUS) number and duty rate; and,

(v) Zone status designation code.

(2) *Inventory loss or gain.* Following the manufacturing period, inventory records shall be kept, which show the amount of loss or gain with respect to the production of final products.

(c) *Domestic status feedstock.*—(1) *Admission to subzone.* Each subzone refiner shall maintain a record of each receipt of domestic status feedstock, containing at least the following information:

(i) Admission date and unique identifier assigned;

(ii) Feedstock type and class;

(iii) Total quantity received (in barrels); and

(iv) Zone status.

(2) *Weekly reporting.* The subzone refiner shall file with the district director a weekly report on Customs Form 214, listing the receipts of domestic feedstock into the subzone for the previous calendar week.

(d) *Attribution.*—(1) *Producibility.* The producibility method of attribution, the industry standards of potential production for which are contained in the tables published in T.D. 66-16, requires that records be kept to attribute final products to those feedstocks identified by unique identifier, which have entered the production process during the current or prior manufacturing periods, and must convert volume measurements therefore to weight measurements in order to account for all feedstocks put into process (see §§ 146.97 and 146.99(a)).

(2) *Other inventory method.* A refiner may request approval of a different inventory control method. Customs will consider such request under the rulemaking procedures set forth in 5 U.S.C. 553.

(3) *Stock in process.* The method of recording and attributing stock in process in a subzone refinery must be included in the refiner's procedures manual together with examples illustrating the method.

(4) *Feedstock not eligible for attribution.* Feedstock or intermediate product which is admitted to a refiner subzone, but which is not used in the refinery, is not eligible for attribution to any final product.

(e) *Removal of final product.* Each final product removed from the subzone shall have relative value assigned, and be attributed to a feedstock which has been shown to have entered into the production process during the manufacturing period from which such product was produced.

§ 146.94 Records concerning establishment of manufacturing period.

(a) *Feedstock introduced into production.* The refiner must record the date and amount of each feedstock actually introduced into the production process of the refinery in order to establish the start of the manufacturing period for that feedstock. If a feedstock is not introduced into the refinery's crude distillation unit, the refiner must record the processing unit into which the feedstock is first introduced, the date of introduction, and the actual amount introduced. The unique identifier must be used in this connection in the refiner's records.

(b) *Final product removed from subzone.* The refiner must record the date and amount of each final product that is removed from the refiner's subzone. This date establishes the end of the manufacturing period. The refiner must record the unique identifier of the feedstock attributed to the final product.

(c) *Removals during calendar week.* Any removals of final product during a calendar week will be considered to have occurred on the last day of that week for purposes of attribution as well as for the calculation of the relative value of two or more final products attributed to a given receipt of privileged foreign feedstock.

§ 146.95 Feedstock inventories.

(a) *Accountability.* Feedstock inventories must be accounted for by type, class and unique identifier. Attribution of inventory to production must be made for feedstock within each type, class and zone status by means of the unique identifier, and, under the producibility method, shall not exceed the industry standards of potential production published in T.D. 66-16. If using producibility, the refiner must convert volume measurements to weight measurements using American Petroleum Institute (API) conversion factors.

(b) *Fungible feedstocks.* Fungible feedstock must be attributed by means of a unique identifier on a First-In-First Out (FIFO) basis, that is, the oldest such identifier for feedstock of the same type, class and zone status, must be selected and its inventory quantity reduced accordingly, unless through some alternate means of identification approved in advance by customs, specificity or identity of the Product can otherwise be shown.

§ 146.96 Subzone activity reports.

The subzone refiner shall prepare an activity report for the period covered by an entry summary (CF 7501), which lists all admissions to, and transfers from,

the subzone. The refiner shall retain the report for a spot check or audit by Customs, and need not furnish it to Customs unless requested. While there is no form specified for the report, it should include the following information:

- (a) Product shipment report;
- (b) Inventory disposition report;
- (c) Duty and user fee report; and,
- (d) Cumulative entry activity report.

§ 146.97 Producibility.

(a) *Industry standards of potential production.* The industry standards of potential production on a practical operating basis necessary for the producibility inventory method are contained in tables published in T.D. 66-16. With these tables, a subzone refiner may attribute final products removed from the subzone to feedstocks, by means of their unique identifiers, which have entered the production process during the current or a prior manufacturing period on a converted weight basis.

(b) *Attribution to product or feedstock not listed in T.D. 66-16.* For purposes of attribution, where a final product or a feedstock is not listed in T.D. 66-16, the refiner must submit a proposed attribution schedule, supported by a technical memorandum, to Customs. Customs will review the submission to determine whether amendment of T.D. 66-16 is warranted. Such requests for amendment of T.D. 66-16 shall be submitted to the Assistant Commissioner, Office of Commercial Operations prior to liquidation of any entry of final product or its removal from the subzone for exportation, in accordance with such attribution. If a refiner elects to show attribution on a producibility basis, but fails to keep records on that basis, Customs shall use the refiner's actual production records to determine attribution and any necessary relative value calculation.

Example

Day 1

Transfer, within the refinery subzone, from one or more storage tanks to the crude distillation unit:

50,000 pounds privileged foreign (PF) class II crude oil.
50,000 pounds PF class III crude oil.
50,000 pounds domestic status class III crude oil.

Day 20

Removal from the refinery subzone for exportation of 50,000 pounds of aviation gasoline.

The period of manufacture for the aviation gasoline is Day 1 to Day 20. The refiner must first attribute the designated source of the aviation gasoline.

In order to maximize the duty benefit conferred by the zone operation, the refiner chooses to attribute the exported aviation gasoline to the privileged foreign status crude oil. Under the tables for potential production (T.D. 66-16), class II crude has a 30% potential, and class III has a 40% potential. The maximum aviation gasoline producible from the class II crude oil is 15,000 pounds (50,000 × .30). The maximum aviation gasoline producible from the privileged foreign status class III crude oil is 20,000 pounds (50,000 × .40). The domestic class III crude would also make 20,000 pounds of aviation gasoline.

The refiner could attribute 15,000 pounds of the privileged foreign class II crude oil, 20,000 pounds of the privileged foreign class III crude oil, 15,000 pounds of the domestic class III crude oil as the source of the 50,000 pounds of the aviation gasoline that was exported. 35,000 pounds of class II crude oil would be available for further production for other than aviation gasoline, 30,000 pounds of privileged foreign class III crude oil would be available for further production for other than aviation gasoline, and 35,000 pounds of domestic status class III crude oil would be available for further production, of which up to 5,000 pounds could be attributed to aviation gasoline.

Day 21

Transfer, within the refinery subzone, from one or more storage tanks to the crude oil distillation unit:

50,000 pounds PF status class I crude oil.
50,000 pounds PF status class IV crude oil.

Day 40

Removal from the refinery subzone:

30,000 pounds of motor gasoline for consumption.
10,000 pounds of jet fuel sold to the U.S. Air Force for use in military aircraft.
10,000 pounds of aviation gasoline sold to a U.S. commuter airline for domestic flights.
10,000 pounds of kerosene for exportation.

To the extent that the crude oils that entered production on Day 1 are attributed as the designated sources for the products removed on Day 40, the period of manufacture is Day 1 to Day 40. If the refiner chooses to attribute the crude oils that entered production on Day 21 as the designated sources of the products removed on Day 40 using the production standards published in T.D. 66-16, the manufacturing period is Day 21 to Day 40. This choice will be important if a relative value calculation on the privileged foreign status crude oil is required, because the law requires the value used for computing the relative value to be the average per unit value of each product for the manufacturing period. Relative value must be calculated if a source feedstock is separated into two or more products that are removed from the subzone refinery. If the average per unit value for each product differs between the manufacturing period from Day 1 to Day 40 and the manufacturing period from Day 21 to Day 40, the correct period must be used in the calculation.

In order to minimize duty liability, the refiner would try to attribute the production

of the exported kerosene and the sale of the jet fuel to the US Air Force to the privileged foreign crude oils. For the same reason, the refiner would try to attribute the removed motor gasoline and the aviation gasoline for the commuter airline to the domestic crude oil.

Accordingly, the refiner chooses to attribute up to 5,000 pounds of the domestic status class III crude as the source of the 10,000 pounds of aviation gasoline removed from the subzone refinery for the commuter airline. Since no other aviation gasoline could have been produced from the crude oils that entered production on Day 1, the refiner must attribute the remainder to the crude oils that entered production on Day 21. Again, using the production standards from T.D. 66-16, the class I crude could produce aviation gasoline in an amount up to 10,000 pounds ($50,000 \times .20$). Likewise, the class IV crude oil could produce aviation gasoline in an amount up to 8,500 pounds ($50,000 \times .17$).

The refiner selects use of the class I crude as the source of the aviation gasoline. The refiner could attribute up to 27,300 pounds ($35,000 - 5,000 \times .91$) of the domestic class III crude oil as the source of the motor gasoline. This would leave 2,700 pounds of domestic class III crude available for further production for other than aviation gasoline or motor gasoline. The remaining motor gasoline removed (also 2,700 pounds) must be attributed to a privileged foreign crude oil. The refiner selects the privileged foreign class II crude oil that entered production on Day 1 as the source for the remaining 2,700 pounds of motor gasoline.

This would leave 32,300 pounds of privileged foreign class II crude oil available for further production, of which no more than 27,400 pounds could be designated as the source of motor gasoline. The refiner attributes the jet fuel that is removed from the refinery subzone for the U.S. Air Force for use in military aircraft to the privileged foreign class II crude oil. The refiner could attribute up to 20,995 pounds of jet fuel from that class II crude oil ($32,300 \times .65$). Designating that class II crude oil as the source of the 10,000 pounds of jet fuel leaves 22,300 pounds of privileged foreign class II crude oil available for further production, of which up to 10,995 pounds could be attributed as the source of the jet fuel. Because the motor gasoline and the jet fuel, under the foregoing attribution, would be considered to have been separated from the privileged foreign class II crude oil, a relative value calculation would be required.

The jet fuel is eligible for removal from the subzone free of duty by virtue of 19 U.S.C. § 1309(a)(1)(A). The refiner could attribute the privileged foreign class II crude oil as being the source of 9,812 pounds of jet fuel ($22,300 \times .44$). The refiner chooses to attribute the privileged foreign class III crude oil as the source of the jet fuel. The refiner could attribute to that class III crude oil up to 15,000 pounds of kerosene ($30,000 \times .50$).

§ 146.98 Relative value.

(a) *Required.* A relative value calculation is required by law for privileged foreign merchandise (see

§ 146.92(n)), when two or more products are separated therefrom. The refiner must determine whether the final product could have been produced from the foreign or domestic feedstock actually used during the manufacturing period of that product. If the final product is determined to be produced from a privileged foreign feedstock, the refiner must calculate its applicable relative value.

(b) *Acceptable methods for computing relative value.* The following are acceptable methods for computing relative values for final products removed from a refinery subzone:

(1) *Relative value at time of shipment.* Under this method, only products that have been refined and removed from the subzone during the manufacturing period are used in the relative value computation.

(2) *Relative value for the manufacturing period.* Under this method, only products produced during the manufacturing period are used in the relative value computation. This method requires stacking relative values within each unique identifier until time of removal.

(3) *Relative value at time of reconciliation.* Under this method, products attributed to a unique identifier over its life would be used in a relative value computation, and adjustments made for the duty and user fees paid at time of entry. This method requires a relative value calculation at time of shipment or production to determine the estimated duties and user fees to be paid. This method allows use of one set of product values during the life of the foreign feedstock receipt. Values are adjusted to reflect average values for the applicable manufacturing period, with duty/fee refunded or paid as appropriate.

(c) *Consistent Use Required.* The refiner must use the selected method consistently.

§ 146.99 Methods of attribution.

(a) *Producibility—(1) General.* A subzone refiner must attribute the source of each product removed. The refiner is limited in this regard to feedstocks actually used during the manufacturing period for the final product, and only to the extent that the quantity of such product removed could have been produced from such feedstocks, using the industry standards of potential production on a practical operating basis, as published in T.D. 66-16. Once attribution is made for a particular removed product, that attribution is binding and may not be changed. Subsequent attributions of feedstock to product removed must take

prior attributions into account. Each refiner shall keep records showing how each attribution was made.

(2) *Attribution to privileged foreign feedstock; relative value.* If a removed product is attributed to a privileged foreign status feedstock receipt, and that removed product is the result of a process that involved the separation of that feedstock into one or more other products, the refiner must distribute the liquidated duties and determined taxes on the feedstock to each such product removed for each manufacturing period. Because the time of separation is legally defined as the entire manufacturing period (see § 146.92 (i) and (p)), products attributed to one receipt of privileged foreign status feedstock, and removed during two or more manufacturing periods, will require successive relative value calculations if the average per unit value of each product differs among the respective manufacturing periods (see § 146.98(b)).

(b) *Actual production records.* A refiner may use his actual refinery production records to attribute the feedstocks used to the removed products. Customs shall accept the refiner's recordation conventions to the extent that the refiner demonstrates that it actually uses the conventions in its refinery operations. Whatever convention is elected by the refiner, it must be used consistently in order to be acceptable to Customs.

Example. If the refiner mixes three equal quantities of material in a day tank and treats that product as a three-part mixture in its production unit, Customs will accept the resulting product as composed of the three materials.

If, in the alternative, the refiner assumes that the three products do not mix and treats the first product as being composed of the first material put into the day tank, the second product as composed of the second material put into the day tank, and the third product as being composed of the third material put into the day tank, Customs will accept that convention also.

(c) *Other inventory control methods.* Customs will consider any other inventory control methods that protect the revenue. Protection of the revenue requires that any doubt be resolved in favor of the Government. No other method will be approved unless the refiner can demonstrate that the method will protect the revenue, that it will be less cumbersome for Customs to administer than either the producibility method (T.D. 66-16), or the actual production records of the refiner, and that it will meet generally accepted accounting principles (GAAP). Any

request shall be approved by rulemaking under 5 U.S.C. 553.

Carol Hallett,

Commissioner of Customs.

Approved: June 16, 1992.

Dennis M. O'Connell,

Acting Assistant Secretary of the Treasury
(Enforcement).

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Internal Revenue Service

26 CFR Part 1

[EE-6-92]

RIN 1545-AQ76

Nondiscrimination Requirements for Qualified Plans

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend final regulations under sections 401(a)(4), 410(b), and certain related nondiscrimination requirements. The proposed amendments delay the effective date of the final regulations in order to provide the public with additional time to comply with the regulations and to provide the Service and Treasury with additional time to consider comments on further simplification and clarification of the regulations. These proposed amendments will affect sponsors of and participants in tax-qualified retirement plans.

DATES: Written comments must be received by October 9, 1992.

ADDRESSES: Send written comments to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attention: CC:CORP:T:R (EE-6-92), Washington, DC 20044. In the alternative, comments may be hand delivered to: Internal Revenue Building, room 5228, 1111 Constitution Ave., NW., Attention: CC:CORP:T:R (EE-6-92), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Rebecca Wilson at 202-622-4606 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Final regulations under sections 401(a)(4), 401(a)(5), 401(a)(17), 401(l), 410(b), and 414(s) of the Internal Revenue Code (Code) were published in the *Federal Register* on September 19, 1992 (56 FR 47524). Final regulations under sections 401(a)(26) and 414(r) were published in the *Federal Register* on

December 4, 1991 (56 FR 63410). Final regulations under section 401(k), 401(m), and 402(a) were published in the *Federal Register* on August 15, 1991 (56 FR 40507).

Explanation of Provisions

These proposed regulations extend the effective date of the final regulations under sections 401(a)(4), 401(a)(5), 401(a)(17), 401(l), 410(b), 414(r), and 414(s) of the Code to the first day of plan years beginning on or after January 1, 1994. These regulations are proposed to be effective as if they were published with the final regulations on September 19, 1991.

For plans maintained by organizations exempt from income taxation under section 501(a), these proposed regulations extend the effective date of the final regulations listed in the preceding sentence to the first day of plan years beginning on or after January 1, 1996. For governmental plans, within the meaning of section 414(d), these proposed regulations provide that the relevant nondiscrimination requirements, including sections 401(a)(26), 401(k), and 401(m), are deemed to be satisfied until the first day of plan years beginning on or after the later of January 1, 1996, or 90 days after the opening of the first legislative session beginning on or after January 1, 1996, of the governing body with authority to amend the plan, if that body does not meet continuously. Once the deemed satisfaction period is over, governmental plans must comply with the relevant nondiscrimination regulations. It should be noted that the deemed satisfaction period for sections 401(a)(26), 401(k), and 401(m) (and the coordinating change to the regulations under section 402(a)) applies only to governmental plans, and the effective dates of regulations under those sections are not changed for any other plans.

For plan years beginning before the extended effective dates, these proposed regulations provide that taxpayers may rely on a reasonable, good faith interpretation of sections 401(a)(4), 401(a)(5), 401(a)(17), 401(l), 410(b), 414(r), and 414(s). A plan will be deemed to be operated in accordance with a reasonable, good faith interpretation of those sections if it is operated in accordance with the final regulations. To facilitate reliance on these proposed regulations, the Service is issuing Notice 92-36, 1992-35 I.R.B., dated Aug. 31, 1992, which extends the expiration date of the remedial amendment period under section 401(b) and the relief provided in Notice 91-38, 1991-2 C.B. 636, until the end of the first plan year in which these regulations are proposed to be effective.

In addition, the Notice provides special rules for determining whether a plan is maintained by an organization exempt from income taxation under section 501(a), and thus eligible for the extended effective date under these proposed regulations.

As stated in prior guidance, the Service and the Treasury, in the near future, will propose additional modifications to simplify the final regulations (see Announcement 92-81, 1992-22 I.R.B. 56; Notice 92-31, 1992-29 I.R.B. 6). The proposed regulations published here, however, are intended solely to extend the effective dates in the final regulations, and no inferences should be drawn from these proposed regulations as to the nature of future modifications. When finalized, these proposed regulations and all other proposed modifications to the regulations will be coordinated.

In addition, these proposed regulations do not specifically amend any examples in the final regulations that include dates. These examples are deemed to be amended, however, as necessary to conform to the effective dates in these proposed regulations.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It is also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Written Comments

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety.

Drafting Information

The principal author of these regulations is Rebecca Wilson, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), Internal Revenue Service. However, personnel from other offices of the

Service and Treasury Department participated in their development.

List of Subject in 26 CFR 1.401-0 through 1.419A-2T

Bonds, Employee benefit plans, Income taxes, Pensions, Reporting and recordkeeping requirements, Securities, Trusts and trustees.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for part 1 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.401-4 is amended by revising the section heading and paragraph (d) to read as follows:

§ 1.401-4 Discrimination as to contributions or benefits (before 1994).

(d)(1) Except as provided in paragraph (d)(2) of this section, the provisions of this section do not apply to plan years beginning on or after January 1, 1994. For rules applicable to plan years beginning on or after January 1, 1994, see §§ 1.401(a)(4)-1 through 1.401(a)(4)-13.

(2) In the case of plans maintained by organizations exempt from income taxation under section 501(a), including plans subject to section 403(b)(12)(A)(i) (nonelective plans), the provisions of this section do not apply to plan years beginning on or after January 1, 1996. For rules applicable to plan years beginning on or after January 1, 1996, see §§ 1.401(a)(4)-1 through 1.401(a)(4)-13.

Par. 3. Section 1.401(a)-4 is amended by revising the section heading and paragraph A-6(a) to read as follows:

§ 1.401(a)-4 Optional forms of benefit (before 1994).

A-6: (a) *General effective date*—(1) *In general.* Except as otherwise provided in this section, the provisions of this section are effective January 30, 1986, and do not apply to plan years beginning on or after January 1, 1994. For rules applicable to plan years beginning on or after January 1, 1994, see §§ 1.401(a)(4)-1 through 1.401(a)(4)-13.

(2) *Plans of tax-exempt organizations.* In the case of plans maintained by organizations exempt from income

taxation under section 501(a), including plans subject to section 403(b)(12)(A)(i) (nonelective plans), except as otherwise provided in this section, the provisions of this section are effective January 30, 1986, and do not apply to plan years beginning on or after January 1, 1996. For rules applicable to plan years beginning on or after January 1, 1996, see §§ 1.401(a)(4)-1 through 1.401(a)(4)-13.

Par. 4. Section 1.401(a)(4)-0 is amended by:

(1) Adding an entry for § 1.401(a)(4)-7, paragraph (b)(4)(ii)(C) as set forth below; and

(2) Revising the entry for § 1.401(a)(4)-13, paragraph (a), and adding entries for paragraphs (a)(1), (2), and (3) as set forth below.

§ 1.401(a)(4)-0 Table of contents.

§ 1.401(a)(4)-7 * * *

(b) * * *
(4) * * *
(ii) * * *
(C) Applicable plan years.

§ 1.401(a)(4)-13 * * *

(a) Effective dates.
(1) In general.
(2) Plans of tax-exempt organizations.
(3) Compliance during transition period.

Par. 5. In § 1.401(a)(4)-6, paragraphs (b)(3)(ii), (b)(6), and (c)(4)(iii) are revised to read as follows:

§ 1.401(a)(4)-6 Contributory defined benefit plans.

(b) * * *
(3) * * *
(ii) *Minimum benefit requirement.*

This requirement is satisfied if the plan provides that, in plan years beginning on or after the effective date of these regulations, as set forth in § 1.401(a)(4)-13(a) and (b), each employee will accrue a benefit that equals or exceeds the sum of—

(A) The accrued benefit derived from employee contributions made for plan years beginning on or after the effective date of these regulations, determined under the plan benefit formula without regard to that portion of the formula designed to satisfy the minimum benefit requirement of this paragraph (b) (3)(ii).

(6) *Cessation of employee contributions.* If a contributory DB plan provides that no employee contributions may be made to the plan after the last day of the first plan year beginning on or

after the effective date of these regulations, as set forth in § 1.401(a)(4)-13(a) and (b), the plan may treat an employee's total benefit as entirely employer provided.

(c) * * *

(4) * * *

(iii) All employees in the plan are permitted to make employee contributions under the plan at a uniform rate with respect to all compensation, beginning no later than the last day of the first plan year to which these regulations apply, as set forth in § 1.401(a)(4)-13(a) and (b); and

Par. 6. Section 1.401(a)(4)-7(b)(4)(ii)(B) is revised and paragraph (C) is added to read as follows:

§ 1.401(a)(4)-7 Imputation of permitted disparity.

(b) * * *

(4) * * *

(ii) * * *

(B) *Cumulative permitted disparity limit.* Notwithstanding paragraph (b)(4)(ii)(A) of this section, the permitted disparity rate is zero for an employee who has benefited under a defined benefit plan taken into account under § 1.401(l)-5(a)(3) for a plan year described in paragraph (b)(4)(ii)(C) of this section if imputing permitted disparity would result in a cumulative disparity fraction for the employee, as defined in § 1.401(l)-5(c)(2), that exceeds 35. An employee is not treated as benefiting under a defined benefit plan for a plan year described in paragraph (b)(4)(ii)(C) of this section if the employer can establish that for that plan year the defined benefit plan was not a section 401(l) plan and did not impute permitted disparity under this section. For purposes of this paragraph (b)(4)(ii)(B), a DB/DC plan (as described in § 1.401(a)(4)-9(a)) and a target benefit plan (that satisfies § 1.401(a)(4)-8(b)(3)) are treated as defined benefit plans, but a cash balance plan (that satisfies § 1.401(a)(4)-8(c)(3)) is treated as a defined contribution plan. Thus, for example, if, for any plan year described in paragraph (b)(4)(ii)(C) of this section, an employee benefits under a defined contribution plan that is included in a DB/DC plan that imputes permitted disparity under this section, the employee is treated as benefiting under a defined benefit plan.

(C) *Applicable plan years.* In applying paragraph (b)(4)(ii)(B) of this section, for purposes of determining whether an employee benefits under a defined benefit plan, the applicable plan years are all plan years that begin on or after

one year from the first day of the first plan year to which these regulations apply, as set forth in § 1.401(a)(4)-13 (a) and (b).

Par. 7. In § 1.401(a)(4)-12, under the definition for "QSUPP," paragraph (2)(iv), the last sentence is revised to read as follows:

§ 1.401(a)(4)-12 Definitions.

QSUPP

(2) * * *

(IV) * * * If, by the end of the first plan year to which these regulations apply, as set forth in § 1.401(a)(4)-13 (a) and (b), an amendment is made to a social security supplement in existence on September 19, 1991, the employer may treat the accrued portion of the social security supplement, as determined under the plan without regard to amendments made after September 19, 1991, as included in the employee's accrued social security supplement, provided that the remainder of the social security supplement is accrued under the otherwise applicable method.

Par. 8. Section 1.401(a)(4)-13 is amended by: (1) Revising paragraph (a) as set forth below;

(2) Revising the first sentence of paragraph (b) as set forth below; and

(3) Revising paragraph (d)(6)(ii)(A) as set forth below.

§ 1.401(a)(4)-13 Effective dates and fresh-start rules.

(a) *Effective dates.* (1) *In general.* Except as otherwise provided in this section, §§ 1.401(a)(4)-1 through 1.401(a)(4)-13 apply to plan years beginning on or after January 1, 1994.

(2) *Plans of tax-exempt organizations.* In the case of plans maintained by organizations exempt from income taxation under section 501(a), including plans subject to section 403(b)(12)(A)(i) (nonelective plans), §§ 1.401(a)(4)-1 through 1.401(a)(4)-13 apply to plan years beginning on or after January 1, 1996.

(3) *Compliance during transition period.* For plan years beginning before the effective date of these regulations, as set forth in paragraphs (a) (1) and (2) of this section, and on or after the first day of the first plan year to which the amendments made to section 410(b) by section 1112(a) of the Tax Reform Act of 1986 ("TRA '86") apply, a plan must be operated in accordance with a reasonable, good faith interpretation of section 401(a)(4), taking into account pre-existing guidance and the amendments made by TRA '86 to related

provisions of the Code (including, for example, sections 401(f), 401(a)(17), and 410(b)). Whether a plan is operated in accordance with a reasonable, good faith interpretation of section 401(a)(4) will generally be determined on the basis of all relevant facts and circumstances, including the extent to which an employer has resolved unclear issues in its favor. A plan will be deemed to be operated in accordance with a reasonable, good faith interpretation of section 401(a)(4) if it is operated in accordance with the terms of §§ 1.401(a)(4)-1 through 1.401(a)(4)-13.

(b) *Effective date for governmental plans.* In the case of governmental plans described in section 414(d), including plans subject to section 403(b)(12)(A)(i) (nonelective plans), section 401(a)(4) is considered satisfied for plan years beginning before the later of January 1, 1996, or 90 days after the opening of the first legislative session beginning on or after January 1, 1996, of the governing body with authority to amend the plan, if that body does not meet continuously.

(d) * * *

(6) * * *

(ii) * * *

(A) Select a single plan year beginning after the fresh-start date but beginning not later than the last day of the first plan year to which these regulations apply under paragraph (a) or (b) of this section.

Par. 9. Section 1.401(a)(5)-1 is amended by: (1) Removing paragraph (e)(7);

(2) Redesignating paragraph (e)(8) as paragraph (e)(7); and

(3) Adding a new paragraph (h) as set forth below.

§ 1.401(a)(5)-1 Special rules relating to nondiscrimination requirements.

(h) *Effective date.* (1) *In general.* Except as provided in paragraph (h)(2) of this section, this section is effective for plan years beginning on or after January 1, 1994.

(2) *Plans of tax-exempt organizations.* In the case of plans maintained by organizations exempt from income taxation under section 501(a), including plans subject to section 403(b)(12)(A)(i) (nonelective plans), this section is effective for plan years beginning on or after January 1, 1996.

(3) *Compliance during transition period.* For plan years beginning before the effective date of these regulations, as set forth in paragraphs (h)(1) and (h)(2) of this section, and on or after the

first day of the first plan year to which the amendments made to section 401(a)(5) by section 1111(b) of the Tax Reform Act of 1986 ("TRA '86") apply, a plan must be operated in accordance with a reasonable, good faith interpretation of section 401(a)(5), taking into account pre-existing guidance and the amendments made by TRA '86 to related provisions of the Code. Whether a plan is operated in accordance with a reasonable, good faith interpretation of section 401(a)(5) will generally be determined based on all relevant facts and circumstances, including the extent to which an employer has resolved unclear issues in its favor. A plan will be deemed to be operated in accordance with a reasonable, good faith interpretation of section 401(a)(5) if it is operated in accordance with the terms of this section.

Par. 10. Section 1.401(a)(17)-1 is amended by:

(1) Revising paragraph (d)(1)(iii) as set forth below;

(2) Removing the first two sentences of paragraph (d)(2) and adding three sentences in their place as set forth below; and

(3) Revising paragraph (e)(2)(iii) as set forth below.

§ 1.401(a)(17)-1 Limitation on annual compensation.

(d) * * *

(1) * * *

(iii) *Exception for governmental plans.* In the case of governmental plans described in section 414(d), including plans subject to section 403(b)(12)(A)(i) (nonelective plans), section 401(a)(17) is considered satisfied for plan years beginning before the later of January 1, 1996, or 90 days after the opening of the first legislative session beginning on or after January 1, 1996, of the governing body with authority to amend the plan, if that body does not meet continuously. For purposes of this paragraph (d)(1)(iii), the term "governing body with authority to amend the plan" means the legislature, board, commission, council, or other governing body with authority to amend the plan.

(2) *Regulatory effective date.* This § 1.401(a)(17)-1 applies to plan years beginning on or after January 1, 1994. However, in the case of a plan maintained by an organization that is exempt from income taxation under section 501(a), including plans subject to section 403(b)(12)(A)(i) (nonelective plans), this § 1.401(a)(17)-1 applies to plan years beginning on or after January 1, 1996. For plan years beginning before the effective date of these regulations

and on or after the first day of the first plan year to which section 401(a)(17) applies, a plan must be operated in accordance with a reasonable, good faith interpretation of section 401(a)(17). * * *

(e) * * *

(2) * * *

(iii) "Section 401(a)(17) fresh-start date" means a fresh-start date as defined in § 1.401(a)(4)-12 not earlier than the last day of the last plan year beginning before the statutory effective date, as set forth in paragraph (e)(2)(i) of this section, and not later than the last day of the last plan year beginning before the first plan year to which this § 1.401(a)(17)-1 applies.

Par. 11. Section 1.401(a)(26)-9(b)(1) is revised to read as follows:

§ 1.401(a)(26)-9 Effective dates and transition rules.

(b) * * *

(1) *Governmental plans and certain section 403(b) annuities.* Section 401(a)(26) is treated as satisfied for plan years beginning before the later of January 1, 1996, or 90 days after the opening of the first legislative session beginning on or after January 1, 1996, of the governing body with authority to amend the plan, if that body does not meet continuously, in the case of governmental plans described in section 414(d), including plans subject to section 403(b)(12)(A)(i) (nonelective plans). For purposes of this paragraph (b)(1), the term "governing body with authority to amend the plan" means the legislature, board commission, council, or other governing body with authority to amend the plan.

Par. 12. Section 1.401(k)-O is amended by revising the entry for paragraph (h)(4)(ii) of § 1.401(k)-1 to read as follows:

§ 1.401(k)-O Certain cash or deferred arrangements, table of contents.

§ 1.401(k)-1 * * *

(h) * * *

(4) * * *

(ii) Plan years beginning before January 1, 1996.

Par. 13. Section 1.401(k)-1 is amended by revising paragraph (h)(4)(ii) to read as follows:

§ 1.401(k)-1 Certain cash or deferred arrangements.

(h) * * *

(4) * * *

(ii) *Plan years beginning before January 1, 1996.* The following rules apply for plan years beginning before the later of January 1, 1996, or 90 days after the opening of the first legislative session beginning on or after January 1, 1996, of the governing body with authority to amend the plan, if that body does not meet continuously, to a governmental plan described in section 414(d) that is not a collectively bargained plan and includes a nonqualified cash or deferred arrangement. For purposes of this paragraph (b)(1), the term "government body with authority to amend the plan" means the legislature, board, commission, council, or other governing body with authority to amend the plan.

Par. 14. Section 1.401(l)-O is amended by:

(1) Adding entries for § 1.401(l)-5, paragraphs (c)(1) (v) and (vi), as set forth below;

(2) Revising the entries for § 1.401(l)-6, paragraphs (a) through (c), as set forth below; and

(3) Removing the entry for § 1.401(l)-6, paragraph (d).

§ 1.401(l)-O Table of contents.

§ 1.401(l)-5 * * *

(c) * * *

(1) * * *

(v) Applicable plan years.

(vi) Transition rule for defined contribution plans.

§ 1.401(l)-6 * * *

(a) Statutory effective date.

(1) In general.

(2) Collectively bargained plans.

(b) Regulatory effective date.

(1) In general.

(2) Plans of tax-exempt organizations.

(3) Defined contribution plans.

(4) Defined benefit plans.

(c) Compliance during transition period.

Par. 15. Section 1.401(l)-5, paragraphs (c)(1)(i) through (iii), are revised and new paragraphs (c)(1) (v) and (vi) are added to read as follows:

§ 1.401(l)-5 Overall permitted disparity limits.

(c) *Cumulative permitted disparity limit—(1) In general—(i) Employees who benefit under defined benefit plans.* In the case of an employee who has benefited under one or more defined benefit plans for a plan year described in paragraph (c)(1)(v) of this section, the

cumulative permitted disparity limit is satisfied if the employee's cumulative disparity fraction, as defined in paragraph (c)(2) of this section, does not exceed 35.

(ii) *Employees who do not benefit under defined benefit plans.* In the case of an employee who has not benefited under a defined benefit plan for any plan year described in paragraph (c)(1)(v) of this section, the cumulative permitted disparity limit is satisfied.

(iii) *Certain plan years disregarded.* For purposes of this paragraph (c), an employee is not treated as benefiting under a defined benefit plan for a plan year described in paragraph (c)(1)(v) of this section if the employer can establish that for that plan year the defined benefit plan was not a section 401(l) plan and did not impute permitted disparity under § 1.401(a)(4)-7.

(v) *Applicable plan years.* In applying paragraphs (c)(1) (i), (ii), and (iii) of this section, for purposes of determining whether an employee benefits under a defined benefit plan, the applicable plan years are all plan years that begin on or after the regulatory effective date, as set forth in § 1.401(l)-6(b), or, in the case of governmental plans, as set forth in § 1.401(a)(4)-13(b).

(vi) *Transition rule for defined contribution plans.* A defined contribution plan is deemed to satisfy the cumulative permitted disparity limit for the first plan year to which these regulations apply, as set forth in § 1.401(l)-6(b), or, in the case of governmental plans, as set forth in § 1.401(a)(4)-13(b).

Par. 16. Section 1.401(l)-6 is revised to read as follows:

§ 1.401(l)-6 Effective dates and transition rules.

(a) *Statutory effective date—(1) In general.* Except as otherwise provided in paragraph (a)(2) of this section, section 401(a)(5)(C) is effective for plan years beginning on or after January 1, 1989, and section 401(l) is effective with respect to plan years, and benefits attributable to plan years, beginning on or after January 1, 1989. The preceding sentence is applicable to a plan without regard to whether the plan was in existence as of a particular date.

(2) *Collectively bargained plans.* (i) In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before March 1, 1986, sections 401(a)(5) and 401(l) are applicable for

plan years beginning on or after the later of—

(A) January 1, 1989; or

(B) The date on which the last of such collective bargaining agreements terminates (determined without regard to any extension of any such agreement occurring on or after March 1, 1986). However, notwithstanding the preceding sentence, sections 401(a)(5) and 401(l) apply to plans described in this paragraph (a)(2) no later than the first plan year beginning after January 1, 1991.

(ii) For purposes of paragraph (a)(2)(i)(B) of this section, a change made after October 22, 1986, in the terms or conditions of a collectively bargained plan, pursuant to a collective bargaining agreement ratified before March 1, 1986, is not treated as a change in the terms and conditions of the plan.

(iii) In the case of a collectively bargained plan described in paragraph (a)(2)(i) of this section, if the date in paragraph (a)(2)(i)(B) of this section precedes November 15, 1988, then the date in this paragraph (a)(2) is replaced with the date on which the last of any collective bargaining agreements in effect on November 15, 1988, terminates, provided that the plan complies during this period with a reasonable, good faith interpretation of section 401(l).

(iv) Whether a plan is maintained pursuant to a collective bargaining agreement is determined under the principles applied under section 1017(c) of the Employee Retirement Income Security Act of 1974. See H.R. Rep. No. 1280, 93d Cong., 2d Sess. 266 (1974). In addition, a plan is not treated as maintained under a collective bargaining agreement unless the employee representatives satisfy section 7701(a)(46) of the Internal Revenue Code after March 31, 1984. See § 301.7701-17T of this chapter for other requirements for a plan to be considered to be collectively bargained.

(b) *Regulatory effective date*—(1) *In general*. Except as otherwise provided in paragraph (b)(2) of this section, §§ 1.401(l)-1 through 1.401(l)-6 apply to plan years beginning on or after January 1, 1994.

(2) *Plans of tax-exempt organizations*. In the case of plans maintained by an organization exempt from income taxation under section 501(a), including plans subject to section 403(b)(12)(A)(i) (nonelective plans), §§ 1.401(l)-1 through 1.401(l)-6 apply to plan years beginning on or after January 1, 1996.

(3) *Defined contribution plans*. A defined contribution plan satisfies section 401(l) with respect to a plan year beginning on or after the effective date of these regulations, as set forth in

paragraphs (b)(1) and (b)(2) of this section, if it satisfies the applicable requirements of §§ 1.401(l)-1 through 1.401(l)-5 for the plan year.

(4) *Defined benefit plans*. A defined benefit excess plan or offset plan satisfies section 401(l) with respect to all plan years, and benefits attributable to all plan years, beginning on or after the effective date of these regulations, as set forth in paragraphs (b)(1) and (b)(2) of this section, by satisfying the applicable requirements of §§ 1.401(l)-1 through 1.401(l)-5 and the requirements of § 1.401(a)(4)-13(c), using as the fresh-start date the last day of any plan year ending on or after December 31, 1988, and beginning before the effective date of these regulations. A defined benefit excess plan or offset plan that does not satisfy section 401(l) with respect to all plan years, and benefits attributable to all plan years, beginning on or after the effective date of these regulations may, under the rules of § 1.401(a)(4)-13(c), satisfy section 401(l) for plan years beginning after a fresh-start date by satisfying the applicable requirements of §§ 1.401(l)-1 through 1.401(l)-5 after the fresh-start date. See § 1.401(a)(4)-13(c)(5)(iii) and (d), which allows increases in each employee's benefit accrued as of the fresh-start date to reflect increases in the employee's compensation if the plan uses a fresh-start date before the effective date applicable to the plan under § 1.401(a)(4)-13(a) or (b).

(c) *Compliance during transition period*. For plan years beginning on or after January 1, 1989, and before the effective date of these regulations, as set forth in paragraph (b) of this section, a plan must be operated in accordance with a reasonable good faith interpretation of section 401(l). Whether a plan is operated in accordance with a reasonable, good faith interpretation of section 401(l) will generally be determined based on all relevant facts and circumstances, including the extent to which an employer has resolved unclear issues in its favor. A plan will be deemed to be operated in accordance with a reasonable, good faith interpretation of section 401(l) if it is operated in accordance with the terms of §§ 1.401(l)-1 through 1.401(l)-5.

Par. 17. Section 1.401(m)-1(g)(4) is revised to read as follows:

§ 1.401(m)-1 Employee and matching contributions.

* * * * *

(g) * * *

(4) *State and local government plans*. A governmental plan described in section 414(d), including a plan subject to section 403(b)(12)(A)(i) (nonelective

plan), is treated as satisfying section 401(m) for plan years beginning before the later of January 1, 1996, or 90 days after the opening of the first legislative session beginning on or after January 1, 1996, of the governing body with authority to amend the plan, if that body does not meet continuously. For purposes of this paragraph (g)(4), the term "governing body with authority to amend the plan" means the legislature, board, commission, council, or other governing body with authority to amend the plan.

* * * * *

Par. 18. Section 1.402(a)-1 is amended by:

(1) Revising the heading and text of paragraph (d)(3)(iv) as set forth below; and

(2) Adding a paragraph (d)(3)(v) as set forth below.

§ 1.402(a)-1 Taxability of beneficiary under a trust which meets the requirements of section 401(a).

* * * * *

(d) * * *

(3) * * *

(iv) *Special rule for collectively bargained plans*. For plan years beginning before January 1, 1993, a nonqualified cash or deferred arrangement will be treated as satisfying section 401(k)(3) solely for purposes of paragraph (d)(2)(i) of this section if it is part of a plan (or portion of a plan) that automatically satisfies section 401(a)(4) under § 1.401(k)-1(a)(7), relating to certain collectively bargained plans.

(v) *Special rule for governmental plans*. For plan years beginning before the later of January 1, 1996, or 90 days after the opening of the first legislative session beginning on or after January 1, 1996, of the governing body with authority to amend the plan, if that body does not meet continuously, in the case of governmental plans described in section 414(d), a nonqualified cash or deferred arrangement will be treated as satisfying section 401(k)(3) solely for purposes of paragraph (d)(2)(i) of this section if it is part of a plan adopted by a state or local government before May 6, 1986. For purposes of this paragraph (d)(3)(v), the term "governing body with authority to amend the plan" means the legislature, board, commission, council, or other governing body with authority to amend the plan.

Par. 19. Section 1.410(b)-0 is amended by revising the headings for §§ 1.410(b)-1, 1.410(b)-2, and the entries for 1.410(b)-10, paragraphs (a) through (c), and removing the entries for 1.410(b)-10.

paragraphs (d) and (e), to read as follows:

§ 1.410(b)-0 Table of contents.

§ 1.410(b)-1 Minimum coverage requirements (before 1994).

§ 1.410(b)-2 Minimum coverage requirements (after 1993).

§ 1.410(b)-10 Effective dates and transition rules.

(a) Statutory effective dates.

- (1) In general.
- (2) Special statutory effective date for collective bargaining agreements.
- (i) In general.
- (ii) Example.
- (iii) Plan maintained pursuant to a collective bargaining agreement.
- (3) Governmental plans.
- (i) Plans subject to section 403(b)(12)(A)(i).
- (ii) Other governmental plans.
- (b) Regulatory effective dates.
- (1) In general.
- (2) Plans of tax-exempt organizations.
- (c) Compliance during transition period.

Par. 20. Section 1.410(b)-1 is amended by revising the section heading to read as follows:

§ 1.410(b)-1 Minimum coverage requirements (before 1994).

Par. 21. Section 1.410(b)-2 is amended by:

- (1) Revising the section heading as set forth below;
- (2) Revising the last sentence of paragraph (d) as set forth below; and
- (3) Revising the last sentence of paragraph (e) and adding a sentence at the end of paragraph (e) as set forth below.

§ 1.410(b)-2 Minimum coverage requirements (after 1993).

(d) * * * For plan years beginning before the effective date set forth in § 1.410(b)-10(a)(3)(i), any plan described in section 410(c)(1)(A) (regarding governmental plans) satisfies the requirements of this section.

(e) * * * For plan years beginning before the effective date set forth in § 1.410(b)-10(a)(3)(ii), any plan described in section 410(c)(1)(A) (regarding governmental plans) satisfies the requirements of this section and is thus treated as satisfying the requirements of section 401(a)(3) as in effect on September 1, 1974. See § 1.410(b)-10(b)(2) for a special rule for plans of tax-exempt organizations.

Par. 22. Section 1.410(b)-6 is amended by:

(1) Revising the last sentence in paragraph (d)(2)(ii)(A) as set forth below; and

(2) Adding a sentence at the end of paragraph (d)(2)(ii)(B) as set forth below.

§ 1.410(b)-6 Excludable employees.

(d) * * *

(2) * * *

(ii) * * *

(A) * * * For plan years beginning before January 1, 1995 (or, in the case of a plan described in § 1.410(b)-10(a)(3) or (b)(2), for any plan year beginning before one year after the applicable effective date of these regulations), any employee may be treated as a collectively bargained employee for a plan year if a collective bargaining agreement required the employee to benefit, for that year, under a multiemployer plan maintained pursuant to the collective bargaining agreement.

(B) * * * For plan years beginning before January 1, 1995 (or, in the case of a plan described in § 1.410(b)-10(a)(3) or (b)(2), for any plan year beginning before one year after the applicable effective date of these regulations), any employee may be treated as a collectively bargained employee for a plan year if a collective bargaining agreement required the employee to benefit, for that year, under a multiemployer plan maintained pursuant to the collective bargaining agreement.

Par. 23. Section 1.410(b)-10 is revised to read as follows:

§ 1.410(b)-10 Effective dates and transition rules.

(a) *Statutory effective dates*—(1) *In general.* Except as set forth in paragraph (a)(2) of this section, the minimum coverage rules of section 410(b) as amended by section 1112 of the Tax Reform Act of 1986 apply to plan years beginning on or after January 1, 1989.

(2) *Special statutory effective date for collective bargaining agreements*—(i) *In general.* As provided for by section 1112(e)(2) of the Tax Reform Act of 1986, in the case of a plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified before March 1, 1986, the minimum coverage rules of section 410(b) as amended by section 1112 of the Tax Reform Act of 1986 do not apply to employees covered by any such agreement in plan years beginning before the earlier of—

- (A) January 1, 1991; or
- (B) The later of January 1, 1989, or the date on which the last of such collective

bargaining agreements terminates (determined without regard to any extension thereof after February 28, 1986). For purposes of this paragraph (a)(2), any extension or renegotiation of a collective bargaining agreement, which extension or renegotiation is ratified after February 28, 1986, is to be disregarded in determining the date on which the agreement terminates.

(ii) *Example.* The following example illustrates this paragraph (a)(2).

Example. Employer A maintains Plan 1 pursuant to a collective bargaining agreement. Plan 1 covers 100 of Employer A's noncollectively bargained employees and 900 of Employer A's collectively bargained employees. Employer A also maintains Plan 2, which covers Employer A's other 400 noncollectively bargained employees. The collective bargaining agreement under which Plan 1 is maintained was entered into on January 1, 1986, and expires December 31, 1992. Because Plan 1 is a plan maintained pursuant to a collective bargaining agreement, section 410(b) applies to the first plan year beginning on or after January 1, 1991. In applying section 410(b) to Plan 2, the 100 noncollectively bargained employees in Plan 1 must be taken into account. The deferred effective date for plans maintained pursuant to a collective bargaining agreement is not applicable in determining how section 410(b) is applied to a plan that is not maintained pursuant to a collective bargaining agreement.

(iii) *Plan maintained pursuant to a collective bargaining agreement.* For purposes of this paragraph (a)(2), a plan is maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers, if one or more of the agreements were ratified before March 1, 1986. Only plans maintained pursuant to agreements that the Secretary of Labor finds to be collective bargaining agreements and that satisfy section 7701(a)(46) are eligible for the deferred effective date under this paragraph (a)(2). A plan will not be treated as a plan maintained pursuant to one or more collective bargaining agreements eligible for the deferred effective date under this paragraph (a)(2) unless the plan would be a plan maintained pursuant to one or more collective bargaining agreements under the principles applied under section 1017(c) of the Employee Retirement Income Security Act of 1974. See H.R. Rep. No. 1280, 93rd Cong. 2d Sess. 266 (1974).

(3) *Governmental plans*—(i) *Plans subject to section 403(b)(12)(A)(i).* In the case of a plan subject to section 403(b)(12)(A)(i) (nonelective plans) that is maintained for an educational organization described in section

403(b)(1)(A)(ii), section 410(b) is considered satisfied for plan years beginning before the later of January 1, 1996, or 90 days after the opening of the first legislative session beginning on or after January 1, 1996, of the governing body with authority to amend the plan, if that body does not meet continuously. For purposes of this section, the term "governing body with authority to amend the plan" means the legislature, board, commission, council, or other governing body with authority to amend the plan. See § 1.410(b)-2(d).

(ii) *Other governmental plans.* Any governmental plan described in section 414(d) that is not subject to section 403(b)(12)(A)(i) (nonelective plans) satisfies the requirements of section 410(b) and is treated as satisfying the requirements of section 401(a)(3) as in effect on September 1, 1974, for plan years beginning before the later of January 1, 1996, or 90 days after the opening of the first legislative session beginning on or after January 1, 1996, of the governing body with authority to amend the plan, if that body does not meet continuously. See § 1.410(b)-2(e).

(b) *Regulatory effective dates.*—(1) *In general.* Except as otherwise provided in this section §§ 1.410(b)-2 through 1.410(b)-9 apply to plan years beginning on or after January 1, 1994.

(2) *Plans of tax-exempt organizations.* In the case of plans maintained by organizations exempt from income taxation under section 501(a), including plans subject to section 403(b)(12)(A)(i) (nonelective plans), §§ 1.410(b)-2 through 1.410(b)-9 apply to plan years beginning on or after January 1, 1996, to the extent such plans are subject to section 410(b).

(c) *Compliance during transition period.* For plan years beginning before the effective date of these regulations, as set forth in paragraph (b) of this section, and on or after the statutory effective date as set forth in paragraph (a) of this section, a plan must be operated in accordance with a reasonable, good faith interpretation of section 410(b). Whether a plan is operated in accordance with a reasonable, good faith interpretation of section 410(b) will generally be determined based on all relevant facts and circumstances, including the extent to which an employer has resolved unclear issues in its favor. If a plan's classification has been determined by the commissioner to be nondiscriminatory and there have been no significant changes in or omissions of a material fact, the classification will be treated as nondiscriminatory for the relevant plan year. A plan will be deemed to be operated in accordance

with a reasonable, good faith interpretation of section 410(b) if it is operated in accordance with the terms of §§ 1.410(b)-2 through 1.410(b)-9.

Par. 24. Section 1.411(d)-4 is amended by revising the sentence at the end of paragraph A-1(b)(1) to read as follows:

§ 1.411(d)-4 Section 411(d)(6) protected benefits.

A-1: * * *

(b) * * *

(1) * * * See § 1.401(a)(4)-4(d) for the definition of an optional form of benefit for plan years beginning on or after January 1, 1994 (or January 1, 1996, in the case of plans maintained by organizations exempt from income taxation under section 501(a), including plans subject to section 403(b)(12)(A)(i) (nonelective plans)).

Par. 25. Section 1.414(r)-1 is amended by revising paragraph (d)(9)(i) to read as follows:

§ 1.414(r)-1 Requirements applicable to qualified separate lines of business.

(d) * * *

(9) * * *

(i) *General rule.* The provisions of this section and of §§ 1.414(r)-2 through 1.414(r)-11 apply to plan years and testing years beginning on or after January 1, 1994 (or January 1, 1996, in the case of plans maintained by organizations exempt from income taxation under section 501(a), including plans subject to section 403(b)(12)(A)(i) (nonelective plans)).

Par. 26. Section 1.414(s)-1 is amended by revising paragraph (i) to read as follows:

§ 1.414(s)-1 Definition of compensation.

(i) *Effective date and transition rules.*—(1) *Statutory effective date.* Section 414(s) applies to years beginning on or after January 1, 1987.

(2) *Regulatory effective date.*—(i) *In general.* Except as otherwise provided in paragraph (i)(2)(ii) of this section, §§ 1.414(s)-1(a) through (h) apply to years beginning on or after January 1, 1994.

(ii) *Plans of tax-exempt organizations.* In the case of a plan maintained by an organization that is exempt from income taxation pursuant to section 501(a), including plans subject to section 403(b)(12)(A)(i) (nonelective plans), §§ 1.414(s)-1(a) through (h) apply to plan years beginning on or after January 1, 1996.

(3) *Compliance during transition period.* For plan years beginning before the effective date of these regulations, as set forth in paragraph (i)(2) of this section, and on or after the statutory effective date as set forth in paragraph (i)(1) of this section, a plan must be operated in accordance with a reasonable, good faith interpretation of section 414(s). Whether a plan is operated in accordance with a reasonable, good faith interpretation of section 414(s) will generally be determined based on all relevant facts and circumstances, including the extent to which an employer has resolved unclear issues in its favor. A plan will be deemed to be operated in accordance with a reasonable, good faith interpretation of section 414(s) (1) and (2) if it is operated in accordance with the terms of §§ 1.414(s)-1(a) through (h). For years beginning before the effective date of these regulations and on or after the statutory effective date, a definition of compensation is also deemed to satisfy section 414(s) as an alternative method of determining compensation under section 414(s)(3) if the definition satisfies the requirements of §§ 1.414(s)-1(a) through (h) or if the definition satisfies the prior regulation provisions of § 1.414(s)-1T. (See § 1.414(s)-1T as contained in the CFR edition revised as of April 1, 1991.) In addition, for those transition years, a definition of compensation is deemed to satisfy section 414(s) as an alternative method of determining compensation under section 414(s)(3) if, based on all the relevant facts and circumstances in effect for the year, use of the definition does not cause discrimination in favor of highly compensated employees.

Shirley D. Peterson,

Commissioner of Internal Revenue.

[FR Doc. 92-18872 Filed 8-7-92; 8:45 am]

BILLING CODE 4830-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 50

[AD-FDL-4193-1]

RIN 2060-AA96

National Ambient Air Quality Standards for Ozone; Proposed Decision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed decision.

SUMMARY: In accordance with the provisions of sections 108 and 109 of the

Clean Air Act (Act), as amended, the EPA has conducted a review of the criteria upon which the existing national ambient air quality standards (NAAQS) for ozone (O_3) are based. The revised criteria and supplement are being published simultaneously with the issuance of this proposed decision. The level of the existing primary and secondary standards for O_3 is currently set at 0.12 parts per million (ppm). The standards are attained when the expected number of days per calendar year with maximum hourly average concentrations above 0.12 ppm is equal to or less than 1, as determined by 40 CFR part 50, Appendix H. As a result of the review of health and welfare criteria, the Administrator proposes under section 109(d)(1) that revisions of the primary and secondary standards are not appropriate at this time. In view of ongoing research on the health and welfare effects of O_3 the EPA Plans to proceed as rapidly as possible with the next review of the air quality criteria and standards for O_3 .

DATES: The EPA will hold a public hearing on September 1, 1992, 9:30 a.m. to 4:30 p.m. (e.d.t.) Written comments on this proposed decision must be received by October 9, 1992.

ADDRESSES: The public hearing will be held in the EPA Education Center Auditorium, 401 M Street SW., Washington, DC.

Submit comments on the proposed action to: Central Docket Section (A-130), Environmental Protection Agency ATTN: Docket No. A-92-17, 401 M St. SW., Washington, DC 20460. The docket may be inspected between 8 a.m. and 3 p.m. on weekdays, and a reasonable fee may be charged for copying. For availability of related documents, see Supplementary Information.

FOR FURTHER INFORMATION CONTACT: Mr. John H. Haines, MD-12, Air Quality Management Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Telephone: 919-541-5533.

SUPPLEMENTARY INFORMATION:

Public Hearing

Individuals planning to make oral presentations at the hearing should notify John H. Haines, at the above address, at least 7 days prior to the date of the hearing. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement before, during, or within 30 days after the hearing. Written statements (duplicate copies preferred) should be submitted to the Central Docket Section, Attention: Docket

Number A-92-17 at the address in the **ADDRESSES** section.

Availability of Related Information

Certain documents are available from the U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. Available documents include: Air Quality Criteria for Ozone and Other Photochemical Oxidants (five volumes, EPA 600/8-84-020aF thru eF, August 1986, NTIS No. PB-87-142949, \$168.00 paper copy); and the 1989 Staff Paper, Review of the National Ambient Air Quality Standards for Ozone: Assessment of Scientific and Technical Information (EPA-450/2-92-001, June 1989, NTIS No. PB-92-190446, \$43.00 paper copy and \$17.00 microfiche). (Add a \$3.00 handling charge per order.) The Criteria Document Supplement, Summary of Selected New Information on Effects of Ozone on Health and Vegetation: Supplement to 1986 Air Quality Criteria for Ozone and Other Photochemical Oxidants (EPA/600/8-88-105F) is available at no cost from The Center for Environmental Research Information (CERI), telephone (513) 569-7562. A limited number of copies of other documents generated in connection with this standard review, such as documents pertaining to control techniques for volatile organic emissions from stationary sources, are available and can be obtained from: U.S. Environmental Protection Agency Library (MD-35), Research Triangle Park, NC 27711, telephone (919) 541-2777. These and other related documents are also available in the EPA docket identified in the **ADDRESSES** section.

The contents of today's preamble are listed in the following outline.

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Appendix I: Closure Letter

I. Background

A. Legislative Requirements

1. The Standards

Two sections of the Act govern the establishment and revision of NAAQS. Section 108 (42 U.S.C. 7408) directs the Administrator to identify pollutants which "may reasonably be anticipated to endanger public health and welfare" and to issue air quality criteria for them. These air quality criteria are to accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of a pollutant in the ambient air.

Section 109 (42 U.S.C. 7409) directs the Administrator to propose and promulgate "primary" and "secondary" NAAQS for pollutants identified under section 108. Section 109(b)(1) defines a primary standard as one the attainment and maintenance of which, in the judgment of the Administrator, based on the criteria and allowing an adequate margin of safety, is requisite to protect the public health. A secondary standard, as defined in section 109(b)(2), must specify a level of air quality the attainment and maintenance of which, in the judgment of the Administrator, based on the criteria, is requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of the pollutant in the ambient air. Welfare effects as defined in section 302(h) [42 U.S.C. 7602(h)] include, but are not limited to, effects on soils, water, crops, vegetation, manmade materials, animals, wildlife, weather, visibility and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being.

The U.S. Court of Appeals for the District of Columbia Circuit has held that the requirement for an adequate margin of safety for primary standards was intended to address uncertainties

associated with inconclusive scientific and technical information available at the time of standard setting. It was also intended to provide a reasonable degree of protection against hazards that research has not yet identified. *Lead Industries Association v. EPA*, 647 F.2d 1130, 1154 (D.C. Cir. 1980), cert. denied, 101 S. Ct. 621 (1980); *American Petroleum Institute v. Costle*, 665 F.2d 1176, 1177 (D.C. Cir. 1981), cert. denied, 102 S. Ct. 1737 (1982). Both kinds of uncertainties are components of the risk associated with pollution at levels below those at which human health effects can be said to occur with reasonable scientific certainty. Thus, by selecting primary standards that provide an adequate margin of safety, the Administrator is seeking not only to prevent pollution levels that have been demonstrated to be harmful but also to prevent lower pollutant levels that he finds may pose an unacceptable risk of harm, even if the risk is not precisely identified as to nature or degree.

In selecting a margin of safety, the EPA considers such factors as the nature and severity of the health effects involved, the size of the sensitive population(s) at risk, and the kind and degree of the uncertainties that must be addressed. Given that the "margin of safety" requirement by definition only comes into play where no conclusive showing of adverse effects exists, such factors, which involve unknown or only partially quantified risks, have their inherent limits as guides to action. The selection of any numerical value to provide an adequate margin of safety is a policy choice left specifically to the Administrator's judgment. *Lead Industries Association v. EPA*, supra, 647 F.2d at 1161-62.

Section 109(d)(1) of the Act requires that "not later than December 31, 1980, and at 5-year intervals thereafter, the Administrator shall complete a thorough review of the criteria published under section 106 and the national ambient air quality standards and shall make such revisions in such criteria and standards as may be appropriate. Section 109(d)(2)(A) and section 109(d)(2)(B) require that a scientific review committee be appointed and provide that the committee shall complete a review of the criteria and the national primary and secondary ambient air quality standards and shall recommend to the Administrator any revisions of existing criteria and standards as may be appropriate.

The process by which the EPA has reviewed the existing air quality criteria and standards for O_3 under section

109(d) is described in a later section of this notice.

2. Related Control Requirements

States are primarily responsible for ensuring attainment and maintenance of ambient air quality standards once the EPA has established them. Under title I of the Act (42 U.S.C. 7410), States are to submit, for EPA approval, State implementation plans (SIPs) that provide for the attainment and maintenance of such standards through control programs directed to sources of the pollutants involved. The States, in conjunction with the EPA, also administer the prevention of significant deterioration program (42 U.S.C. 7470-7479) for these pollutants. In addition, Federal programs provide for nationwide reductions in emissions of these and other air pollutants through the Federal Motor Vehicle Control Program under title II of the Act (42 U.S.C. 7521-7574, which involves controls for automobile, truck, bus, motorcycle, and aircraft emissions; the new source performance standards under section 111 (42 U.S.C. 7411); and the national emission standards for hazardous air pollutants under section 112 (42 U.S.C. 7412).

B. Existing Standards for Ozone

The principal focus of this standard review is on the health and welfare effects of O_3 . Ozone produced in the ambient air is commonly referred to as tropospheric O_3 . It is chemically identical to stratospheric O_3 , which is produced miles above the earth's surface and provides a protective shield from excess ultraviolet radiation. In contrast, tropospheric O_3 produces harmful effects due to its oxidative properties and its proximity to humans, plants, and materials. Ozone is not emitted directly from mobile or stationary sources but, like other photochemical oxidants, commonly exists in the ambient air as an atmospheric transformation product. Ozone formation is the result of chemical reactions of volatile organic compounds (VOC's), nitrogen oxides (NO_x), and oxygen (O_2) in the presence of sunlight and generally at elevated temperatures.

Ozone is a highly reactive gas which at sufficient concentrations can produce a wide variety of harmful effects. At elevated concentrations, O_3 can adversely affect human health, vegetation, materials, economic values, and personal comfort and well-being. Hourly average ambient O_3 levels range from 0.03 ppm in the most remote rural areas to 0.30 ppm and higher in the most polluted urban areas. A detailed

discussion of formation, concentrations, and effects of O_3 can be found in the 1986 Air Quality Criteria Document (U.S. EPA, 1986), the Criteria Document Supplement (U.S. EPA, 1992), and the Staff Paper (U.S. EPA, 1989).

On April 30, 1971, the EPA promulgated primary and secondary NAAQS for photochemical oxidants under section 109 of the Act (36 FR 8186). These were set at an hourly average of 0.08 ppm total photochemical oxidants not to be exceeded more than 1 hour per year. On April 20, 1977, the EPA announced (42 FR 20493) the first review and updating of the 1970 Air Quality Criteria Document for Photochemical Oxidants in accordance with section 109(d)(1) of the Act. In preparing the Air Quality Criteria Document, the EPA provided a number of opportunities for external review and comment. The EPA made two drafts of the document available for public comment, and these drafts were peer reviewed by the Subcommittee on Scientific Criteria for Photochemical Oxidants of the EPA Science Advisory Board. The EPA published the final revised Air Quality Criteria for Ozone and Other Photochemical Oxidants on June 22, 1978.

Based on the 1978 revised Air Quality Criteria Document and taking into account the advice and recommendations of the Subcommittee, on June 22, 1978, the EPA proposed (43 FR 16962) revisions to the then-current primary and secondary NAAQS for photochemical oxidants. The proposed changes included raising the primary standard to 0.10 ppm, retaining the 0.08 ppm secondary standard, changing the chemical designation of the standards from photochemical oxidants to O_3 , and switching to standards with a statistical (i.e., expected exceedances) form rather than a deterministic form (i.e., not to be exceeded more than x number of times per year).

After taking into account public comments, the EPA announced its final decision on the proposed revisions to the 1971 standards. On February 8, 1979 (44 FR 8202), the final rulemaking revised the level of the primary standard from 0.08 ppm to 0.12 ppm, set the secondary standard identical to the primary standard, changed the chemical designation of the standards from photochemical oxidants to O_3 , and revised the definition of the point at which the standard is attained to "when the expected number of days per calendar year with maximum hourly average concentrations above 0.12 ppm is equal to or less than one as determined by Appendix H."

C. Review of Air Quality Criteria and Standards for Ozone and Other Photochemical Oxidants

In response to requirements of section 109(d) of the Act, on March 17, 1982 (47 FR 11561), the EPA announced that it was undertaking plans to revise the existing 1978 Air Quality Criteria Document for Ozone and Other Photochemical Oxidants and on August 22, 1983, announced (48 FR 38009) that review of primary and secondary standards for O₃ had been initiated. The EPA provided a number of opportunities for review and comment on revised chapters of the Air Quality Criteria Document by organizations and individuals outside the Agency. On November 24, 1982 (47 FR 53119), the EPA announced that its Environmental Criteria and Assessment Office (ECAO) would conduct a public workshop on December 15-17, 1982 for authors and scientific peer reviewers to discuss working draft chapters of a third revision of the Air Quality Criteria Document pertaining to effects of O₃ and other photochemical oxidants on vegetation and materials damage. The EPA announced (48 FR 50157) that a second public workshop to discuss draft chapters on health effects of O₃ was to be held on November 16-18, 1983. The EPA carefully considered comments made at both workshops in preparing the first external review draft, made available (49 FR 29845) on July 24, 1984 for a 90-day public review. On August 6, 1984 (49 FR 31337), the Agency extended the comment period to November 19, 1984. Due to the length and complexity of the document and requests for more time to review it, on November 1, 1984, the Agency further extended the comment period to January 4, 1985 (49 FR 44019).

On February 13, 1985 (50 FR 6049) and on April 2, 1986 (51 FR 11339), the EPA announced two public meetings of the Clean Air Scientific Advisory Committee (CASAC) to be held on March 4-6, 1985 and on April 21-22, 1986, respectively. At these meetings, the CASAC reviewed external review drafts of the Air Quality Criteria Document for Ozone and Photochemical Oxidants. Many individuals and representatives of organizations provided comments for consideration. The EPA placed transcripts of the CASAC meetings in the docket for the 1986 Air Quality Criteria Document (ECAO-CD-81-1). The EPA considered comments received from the public and the CASAC members in preparing the final document. The CASAC sent the Administrator a "closure letter" dated October 22, 1986 indicating that it was

satisfied with the final draft of the Air Quality Criteria Document. The letter outlined key issues and recommendations; it is in the docket for today's decision (A-92-17). The EPA released the five-volume 1986 draft final Air Quality Criteria Document in August 1986.

After the CASAC meeting on March 4-6, 1985, the EPA's Office of Air Quality Planning and Standards (OAQPS) began work on the first draft of the Staff Paper (Review of the National Ambient Air Quality Standards for Ozone: Assessment of Scientific and Technical Information—OAQPS Staff Paper). (The Staff Paper is an assessment of scientific and technical information contained in the 1986 draft final Air Quality Criteria Document and other related exposure and risk assessment documents, and it presents staff recommendations to the Administrator regarding primary and secondary standards.) At a public meeting on April 21-22, 1986, the CASAC reviewed the first draft of the Staff Paper. The CASAC recommended prior to closure that OAQPS staff consider new information on prolonged exposure effects of O₃ in a second draft of the Staff Paper. The CASAC reviewed this second draft in a public meeting of the CASAC held on December 14-15, 1987. Staff of the EPA's Health Effects Research Laboratory (HERL) and Corvallis Environmental Research Laboratory (CERL) made presentations on new and emerging information on health effects of prolonged exposures to O₃ and on alternative indicators of impacts on crops. The CASAC concluded that sufficient new information existed to recommend incorporation of relevant new information into a supplement to the 1986 Air Quality Criteria Document (Supplement) and in a third draft of the Staff Paper.

In early 1988, the EPA began working concurrently on a Supplement and a third draft of the Staff Paper. The ECAO staff prepared a draft Supplement titled "Summary of Selected New Information on Effects of Ozone on Health and Vegetation: Draft Supplement to Air Quality Criteria for Ozone and Other Photochemical Oxidants." The EPA made available copies of both the draft Staff Paper and draft Supplement to the CASAC and the public in November 1988.

The CASAC held a public meeting on December 14-15, 1988 to review the draft Supplement and draft Staff Paper. Major issues included: the definition of adverse health effects of O₃, the significance of health studies suggesting

that exercising individuals exposed for 6 to 8 hours to O₃ levels at or below 0.12 ppm may experience transient decreases in pulmonary indicators (including increases in symptom rates), the possibility that chronic irreversible effects may result from lifetime exposures to elevated levels of O₃, and the importance of considering analyses which indicate agricultural crop damage may be better defined by a cumulative seasonal average than by a 1-hour peak level of O₃. In its "closure letter" of May 1, 1989 (reprinted as Appendix I to this notice), the CASAC indicated that the draft Supplement and draft Staff Paper "provide an adequate scientific basis for the EPA to retain or revise primary and secondary standards for ozone." The CASAC concluded that it would be some time before enough new information on the health effects of multi-hour and chronic exposure to O₃ would be published in scientific journals to receive full peer review and, thus, be suitable for inclusion in a criteria document. The CASAC further concluded that such information could better be considered in the next review of the O₃ standards. The CASAC also noted that the form of the secondary standard was of critical importance in protecting against O₃ effects on vegetation and that a cumulative seasonal average would be more appropriate than a 1-hour standard. The CASAC went on to add that if a more appropriate form could not be developed, the Committee was of the opinion that serious consideration be given to lowering the secondary standard to 0.10 ppm. The CASAC strongly endorsed the need for accelerated and expanded research related to multiple hour, seasonal, and lifetime human exposures to O₃, as well as research related to effects of O₃ on forests and ecosystems.

D. Decision Docket

On March 17, 1992, the EPA created a docket (Docket No. A-92-17) for this proposed decision. The docket incorporates by reference the standard review docket (Docket No. OAQPS A-83-04), created in 1983, and the separate docket established for criteria document revision (Docket No. ECAO-CD-81-1), created in 1981.

E. Pending Litigation

On October 22, 1991, the American Lung Association and other plaintiffs filed suit under section 304 of the Act to compel the EPA to complete its review of the criteria and standards for O₃ under section 109(d)(1) of the Act. *American Lung Association v. Reilly*, No. 91-cv-4114 (JRB) (E.D.N.Y.). The

U.S. District Court for the Eastern District of New York subsequently issued an order requiring the EPA to sign a Federal Register notice announcing its proposed decision on whether to revise the standards for O_3 by August 1, 1992 and to sign a Federal Register notice announcing its final decision by March 1, 1993. The order also requires the EPA to use rulemaking procedures in making the proposed and final decisions.

II. Rationale for Proposed Decision

This proposed decision would complete the EPA's review of information on health and welfare effects of O_3 assembled over a 7-year period and contained in the 1986 Air Quality Criteria Document and its Supplement. This review includes an evaluation of key studies published through early 1989, the 1989 Staff Paper assessment of the most relevant information in these documents, and the advice and recommendations of the CASAC as presented both in the discussion of these documents at public meetings and in the CASAC's 1986 and 1989 "closure letters."

Under section 109(b) of the Act, primary and secondary NAAQS are to be based on the air quality criteria issued under section 108, and the EPA must periodically conduct a "thorough review" of the criteria under section 109(d), taking into account the advice and recommendations of the CASAC, as the basis for periodic decisions on whether revisions of NAAQS are appropriate. When Congress enacted the latter requirement in 1977, it was well aware that implementation of the NAAQS can have profound economic and social, as well as environmental, consequences. Understandably, it required that the Administrator's periodic decisions on whether to revise the NAAQS be based on scientific studies that had been rigorously assessed and incorporated in to air quality criteria, and whose implications for public health and welfare had been carefully considered by both the EPA and the CASAC. In practice, the statutory scheme necessarily involves some delay, often a substantial delay, between completion of a criteria document and a final decision on whether to revise the corresponding NAAQS; studies published after completion of the criteria document are ordinarily considered in the next round of review. Otherwise, review and revision of criteria documents would be an endless process because of the continuous need to incorporate new studies, and decisions on whether to

revise the standards would never be made.

In the present case, the Administrator has not taken into account a number of recent studies on the health and welfare effects of O_3 . Although the EPA is aware of the results reported in many of these studies and has initiated preliminary evaluations of a number of them, the studies were not assessed in the 1986 Air Quality Criteria Document nor its Supplement, nor have they undergone the rigorous review process, including CASAC review, required to incorporate them into a new criteria document. The EPA estimates that up to 1,000 new studies may be involved. Although a substantially smaller number may prove to be important for decision-making purposes, it would be premature to draw conclusions on either the scientific merit or the ultimate implications of particular studies prior to a rigorous and comprehensive assessment of the studies by the EPA and CASAC. As illustrated by the discussion of key studies in this section and by the contents of the five-volume 1986 Air Quality Criteria Document, its Supplement and the 1989 Staff Paper, the nature of such studies, their findings, and the issues to which they are relevant are highly technical and complex. The process for assessing their scientific merit, their relevance, and their ultimate implications for decision making on the NAAQS, as illustrated by the summary of the current review in Section I.C. above, is correspondingly complex.

As discussed in Section III, the EPA estimates that 2 to 3 years will be necessary to incorporate the new studies into a revised criteria document, to evaluate the significance of the key information for decision-making purposes, to develop staff recommendations for the Administrator, and to provide appropriate opportunities for CASAC review and public comment. Having missed both the 1985 and the 1990 deadlines for completion of review cycles under section 109(d), the EPA believes it would be inappropriate and, indeed, does not have unlimited discretion to delay completion of the current review further for these purposes. See *Environmental Defense Fund v. Thomas*, 870 F.2d 892 (2d Cir.), cert. denied sub nom. *Alabama Power Co. v. Environmental Defense Fund*, 110 S.Ct. 537 (1989). As a practical matter, there is insufficient time to do so under the court order in the *American Lung Association* case. As discussed in Section III, however, the EPA plans to proceed as rapidly as possible with the

next review of criteria and standards for O_3 .

Based on the 1986 Air Quality Criteria Document, the subsequent Supplement, and the 1989 Staff Paper, and taking into account the CASAC's advice and recommendations, the Administrator focused on a discrete range of policy options for revising or not revising the current O_3 standards. The options included addressing the following questions:

- (1) Is sufficient health effects information available to warrant the replacement (or supplementation) of the current 1-hour primary standard with a new 6- to 8-hour standard to protect against prolonged exposures and to provide additional protection for the most sensitive group(s)?
- (2) Is sufficient health effects information available to provide the basis for the establishment of a seasonal or other long-term standard to protect against possible chronic effects in the exposed population?
- (3) Should the level of the current 1-hour primary standard be revised from 0.12 ppm to 0.10 ppm?
- (4) Should the level of the current 1-hour secondary standard be revised from 0.12 ppm to 0.10 ppm, or should a new seasonal standard be established?

A. The Primary Standard

1. Basis for the Existing 1-Hour Standard

In selecting the level for the current 1-hour primary standard in 1979, the Administrator made judgments regarding lowest reported effect levels, sensitive populations, nature and severity of health effects, and margin of safety. The judgment of the lowest observed effect level was based largely on several human clinical studies. The key study was by DeLucia and Adams (1977), who reported symptoms of discomfort and small but statistically-nonsignificant lung function decrements in vigorously-exercising healthy subjects acutely exposed to O_3 at concentrations as low as 0.15 ppm O_3 . The principal sensitive group of concern in setting the 1979 O_3 primary standard was asthmatics, although the EPA recognized that nonasthmatic individuals engaged in exercise are also potentially vulnerable to acutely-irritating effects of O_3 . In addition, impaired pulmonary function and symptoms were recognized as the best-documented effects in human clinical studies. More severe effects such as decreased resistance to respiratory infection, induction of chronic respiratory disease, and possible carcinogenic/mutagenic effects also had been reported in animal

toxicology studies, and some limited epidemiology studies raised concern about possible aggravation of preexisting chronic respiratory disease. However, uncertainties regarding these data limited their usefulness.

Finally, in selecting a standard level intended to provide an adequate margin of safety, the Administrator noted that the available quantitative information on human health effects of O_3 was quite limited. For that reason and because the more qualitative information in the health criteria suggested the possibility of adverse effects occurring below 0.15 ppm O_3 , the Administrator concluded "that a standard of 0.12 ppm is necessary and prudent unless and until further studies demonstrate reason to doubt that it adequately protects public health."

2. Health Effects Information Since 1979

Since 1979, the available information on health effects caused by acute (1- to 3-hour) exposures to O_3 has expanded greatly. Additional new information on prolonged (6- to 8-hour) exposures began to appear in the scientific literature during the late 1980's and continues to be published at this time. Although some information on chronic effects was available in 1979, a significant body of data from animal studies has been published during the past decade confirming damage in animals caused by chronic O_3 exposures. All key information available up to early 1989 has undergone careful review for incorporation in the 1986 Air Quality Criteria Document, the Supplement, and the 1989 Staff Paper.

a. Effects of 6- to 8-hour exposure. Reports of enhanced effects from prolonged exposures to O_3 began to appear in 1985. Lioy et al. (1985) and Spektor et al. (1988a,b) conducted summer camp field studies of children engaged in outdoor activity for periods of several days to weeks, during which they were exposed to ambient O_3 for several hours per day. These studies reported that statistically-significant, short-term pulmonary function decrements, compared to initial baseline values, could be measured even when the O_3 NAAQS were not exceeded. The effects increased with exposure to increasing levels of O_3 . Pulmonary function decrements reported in the summer camp studies could be attributed in part to factors such as other pollutants or heat. Moreover, the health significance of pulmonary function decrements of the duration and magnitude reported in these studies is unclear.

Multihour human exposure studies were conducted to assess the effects of

prolonged exposure to O_3 alone in a controlled environment. These studies (Folinsbee et al., 1989; Horstman et al., 1988, 1989) exposed subjects engaged in intermittent, moderate to heavy exercise (minute ventilation, $\dot{V}_E = 40$ liters/minute; e.g., brisk walking or easy cycling) for 6.6 hours to O_3 levels of 0.08, 0.10, and 0.12 ppm. They reported small but statistically-significant group mean decreases in lung function, measured as forced expiratory volume ($FEV_{1.0}$), at all three exposures compared to filtered air. Respiratory systems (e.g., cough, pain on deep inspiration) increase with increasing O_3 levels. (The exposure protocol was designed to simulate a normal workday for a construction worker.) Again, the public health significance of the reported lung function decrements needs further evaluation.

Biochemical indicators of pulmonary inflammation (i.e., cells and other mediators of a lung inflammatory response) were also reported to increase in healthy subjects exposed for 6.6 hours to 0.10 ppm O_3 while engaging in intermittent, moderate to heavy exercise ($\dot{V}_E = 40$ liters/minute) (Koren et al., 1988a). More specifically, this and other research (Koren et al., 1988b,c) demonstrate that cells and soluble mediators suggestive of possible danger to pulmonary tissue are increased as a result of prolonged O_3 exposures. The potential significance of these results lies in the fact that they represent indicators of inflammation in humans and potential for damage in lower airways from prolonged O_3 exposures.

The CASAC "closure letter" of May 1, 1989 stated, "While reaching closure at this time, the Committee did note an emerging data base on the acute health effects resulting from 6-plus hours of O_3 exposure, providing evidence of the possible need for a standard with a 6-8 hour averaging time. However, it was the Committee's view that it would be some time before enough of this developing information would be published in scientific journals to receive full peer review and, thus, be suitable for inclusion in a criteria document. The CASAC concluded such information can better be considered in the next review of the ozone standards." Although the studies cited above are of concern to the EPA, they have not yet been confirmed in other laboratories. Similar research is currently under way in other laboratories and should be available for a subsequent review of air quality criteria. For these reasons, the Administrator concurs with the CASAC that this information should be considered in the next review of the O_3 standards.

b. Effects of seasonal or chronic exposures. Evidence concerning possible seasonal or chronic effects of O_3 has accumulated in the animal toxicology literature. Chronic and subchronic effects such as inflammation, structural changes in respiratory tissue, and increased collagen content in the lungs have been reported after exposure to O_3 in the range of 0.12 to 1.0 ppm and higher. Impaired ability to resist respiratory infection has been reported after exposure to 0.10 ppm O_3 . Quantitative extrapolation of these effects reported in animals to human health effects remains limited by inadequate knowledge of dosimetry and species sensitivity differences.

Although the 1989 CASAC "closure letter" expressed concern for the possibility that chronic, irreversible effects may result for people exposed to O_3 over a lifetime, the CASAC concluded that such changes have not yet been demonstrated. The CASAC also concluded that "there is not an adequate data base on the effects of multiple hour or seasonal exposures to O_3 , especially as regards whether such exposures may produce chronic health effects. This is especially troubling since such long-term exposures to O_3 occur in many parts of the United States and involve many millions of people * * *. It is critical that the data base on health and welfare effects related to multiple hour, seasonal and lifetime exposures of O_3 be increased through an accelerated and expanded research effort."

Several chronic animal studies by the EPA, the National Toxicology Program (NTP), and the Health Effects Institute (HEI) are expected to be available in time for the next O_3 criteria review cycle. Animal toxicology studies at the EPA are assessing the health effects in rats of chronic exposure to O_3 , and a cooperative effort between the NTP and the HEI is focused on potential carcinogenic and cocarcinogenic, as well as morphological, effects of chronic O_3 exposures. The EPA, in cooperation with New York University, is also conducting an epidemiological field study to investigate the effects of chronic exposure to O_3 and other irritants on lung function development in healthy young adults. Results of many of the above studies should elucidate some, but not all, of the chronic effects issues in the next criteria review cycle.

c. Effects of 1- to 3-hour exposures. The 1986 Air Quality Criteria Document reflected a greatly expanded data base on effects from short-term exposures to O_3 of 1 to 3 hours in healthy individuals. Controlled human exposure studies (McDonnell et al., 1983; Cong et al., 1986)

reported small, but statistically-significant, transient declines in pulmonary function (e.g., reductions in lung volume and air flow), which in some cases were accompanied by symptoms (e.g., cough, chest pain, throat irritation, shortness of breath) during exposures to O_3 in the range of 0.12 to 0.15 ppm. These effects, however, were reported only when subjects engaged in very heavy exercise (V_E =68-89 liters per minute). Such exercise levels typically occur when a person engages in activities like running or cycling. It should be noted, however, that without heavy exercise even the most sensitive subjects will not experience statistically-significant decrements in lung function ($FEV_{1.0}$) at low-level O_3 exposures (around 0.12 ppm after 1 to 3 hours); and furthermore, the magnitude of effects which can be measured at these exposure levels, even with heavy exercise, is not generally considered to be adverse to health. A generally accepted relationship is that for any given individual, the greater the exercise level during exposure to O_3 , the greater the short-term pulmonary function response experienced (U.S. EPA, 1986, p. 12-81).

One of the key issues that emerged during review of these and other studies was the high degree of variability in responsiveness between individuals exposed to similar O_3 levels. This was evident from the number of studies (Gibbons and Adams, 1984; Linn et al., 1986; Avol et al., 1984; Schelegle and Adams, 1986) that found no statistically-significant response at exposures (0.12 to 0.15 ppm O_3 and exercise levels (V_E =55 to 86 liters per minute) similar to those in the above-cited studies. In two of these studies (Avol et al., 1984; Linn et al., 1986), statistically-significant changes in $FEV_{1.0}$ began to appear at 0.16 ppm O_3 .

Although the group mean lung function decrements may be only 1 to 4 percent for the lower level O_3 exposures, the 1986 Air Quality Criteria Document (U.S. EPA, 1986, p. 12-22) concluded that between 5 and 20 percent of otherwise healthy individuals may be more responsive to O_3 during exercise and, therefore, would be at higher risk to O_3 exposures. For example, McDonnell et al. (1983) analyzed intersubject variability in a study involving 135 healthy young males who were exposed to various O_3 levels (0.12 ppm to 0.4 ppm) during 2 hours of intermittent, very heavy exercise. When the subjects were exposed to 0.18 ppm, the study reported changes in $FEV_{1.0}$ ranging from 0 to -23 percent, with a group mean of -6 percent. Subjects exposed to 0.12 ppm

O_3 experienced changes ranging from +7 to -16 percent, with a group mean decrement in $FEV_{1.0}$ of -4 percent. Kulle et al. (1985) exposed each of their 20 subjects to various O_3 concentrations for 2 hours with heavy, intermittent exercise. They reported changes in $FEV_{1.0}$ of +10 to -4 percent, with a group mean of +1 percent at 0.10 ppm O_3 . The response increased to +3 to -9 percent (group mean of -1 percent) at 0.15 ppm O_3 . At 0.2 ppm O_3 , the $FEV_{1.0}$ decrements increased to +3 to -16 percent, with a group mean response of -3 percent. At concentrations below 0.18 ppm O_3 , these effects would not be noticed by most healthy individuals. For these studies, the effects experienced by even the most sensitive individuals acutely exposed to 0.12 to 0.15 ppm O_3 ranged from -9 to -16 percent decline in $FEV_{1.0}$ with few, if any, symptoms; these effects would be considered only mild to moderate by many health experts (U.S. EPA, 1989, p. VII-53).

The EPA staff made several other observations regarding health effects from short-term exposures to O_3 . Exercise performance is reportedly not affected in very heavily-exercising (V_E =86-88 liters per minute) individuals exposed to 0.12 ppm O_3 for 1 hour. Measurable effects were seen in individuals exposed to levels of 0.18 and 0.24 ppm O_3 . At exposures of 0.18 and 0.24 ppm, some subjects were not able to complete the protocol (Schelegle and Adams, 1986; Cong et al., 1986). Increased airway reactivity to bronchoconstrictors has been observed in heavily-exercising (V_E =70 liters per minute) individuals after 2-hour exposures to 0.18 ppm O_3 (McDonnell et al., 1987). Increased presence of cells and other mediators of lung inflammation have been reported at 18 hours post exposure in heavily-exercising (V_E =64 liters per minute) subjects exposed for 2 hours to 0.4 ppm O_3 (Koren et al., 1988a,b,c). These studies of inflammatory response prompt concern that repeated or chronic exposures to high levels of O_3 may result in permanent lung tissue damage.

Finally, although epidemiological evidence (Whittemore and Korn, 1980; Holguin et al., 1985; Bates and Sizto, 1987, 1989; Lebowitz et al., 1982, 1983) has suggested that O_3 and other photochemical oxidants may be associated with increased asthma attack rates, excess respiratory hospital admissions, and lung function decrements in asthmatics, uncertainty associated with these data make it difficult to determine a clear cause-effect relationship or an appropriate

exposure averaging time for the reported responses.

3. Proposed Decision on the Primary Standard

The Administrator is proposing to determine that revisions of the existing O_3 primary standard are not appropriate at this time. In reaching this proposed decision, the Administrator has fully considered the health effects information assessed in the 1986 Air Quality Criteria Document, the Supplement that updated that information, the 1989 Staff Paper, and the advice and recommendations of the CASAC in its 1989 "closure letter."

The Administrator agrees with the staff and CASAC conclusions that the preliminary information on effects of prolonged exposures to O_3 contained in the 1986 Air Quality Criteria Document and the Supplement is not sufficient to support the establishment of a new 6-8 hour standard to protect against prolonged exposures, or a seasonal or other long-term standard to protect against chronic effects. In reaching this proposed decision, the Administrator recognizes that a number of new studies, particularly on 6-8 hour exposures to O_3 , have been published in the scientific literature since completion of the air quality criteria that serve as the basis for today's decision. As discussed in Section III, the EPA intends to proceed with the next periodic review of the air quality criteria as rapidly as possible so that the implications of these new studies can be given early consideration. The Administrator is also mindful that there is research in progress on the chronic effects of O_3 that should become available in the next 1 to 2 years. When this new information has been incorporated into the air quality criteria, a more informed decision can be made as to whether adding a new 6-8 hour standard and/or a seasonal or other long-term standard would be appropriate.

The Administrator also carefully considered the health effects information on short-term exposures to O_3 contained in the 1986 Air Quality Criteria Document and its Supplement. As contrasted to the limited information on health effects of O_3 available in 1979, by 1989 information on 1- to 3-hour exposures had expanded greatly. The EPA staff and the CASAC identified several factors that the Administrator should consider in reaching a decision on whether or not to revise the current primary standard to protect against short-term exposures to O_3 . These include: (a) The sensitive populations affected by O_3 , (b) the nature and

severity of the effects and (c) the protection afforded by the current standards.

a. Sensitive populations affected.

There are two groups identified as being at potential risk from acute exposures to O_3 (U.S. EPA, 1986, p. 1-164). As discussed in the 1986 Air Quality Criteria Document, the first is that group in the general population characterized as having preexisting respiratory disease (e.g., asthma or chronic obstructive lung disease). These individuals are not more responsive than healthy individuals in terms of the magnitude of pulmonary function decrements seen at typical exposure levels and durations. The EPA is mindful of possible risks to this group because the impact of O_3 -induced responses in their already-compromised respiratory systems may more noticeably impair their ability to function adequately, although this has not been fully investigated. Also, limitations on using such individuals in experimental studies have prevented an adequate assessment of the full range of potential responses to O_3 or their health significance in these individuals.

The second group that may be at increased risk to acute O_3 exposures is that subset of the general population of healthy individuals who show an unusual responsiveness to O_3 , and who engage in moderate to heavy exercise during elevated O_3 levels. Exercise increases the amount of O_3 entering the airways and can cause O_3 to penetrate to peripheral regions of the lung where lung tissue is more sensitive. Individuals who are unusually responsive to O_3 experience greater decrements in lung function from exposure to O_3 than the average response of the groups studied. As yet, there are no means to determine in advance which persons will be unusually responsive to O_3 , but estimates based on subjects already studied suggest 5 to 20 percent of the general population may show a substantially greater response than average. It is not clear whether these individuals constitute a population subgroup with a specific risk factor or simply represent the upper 5 to 20 percent of the O_3 response distribution (U.S. EPA, 1989, p. III-12).

b. Nature and severity of effects.

Ozone acts as a pulmonary irritant when it comes into contact with the mucous or surfactant layer lining the respiratory tract. Because O_3 is chemically quite reactive, it tends to react rapidly with the mucous layer, thus causing increased total absorption in the upper airways and a reduction in O_3 reaching the more sensitive tissues

deeper in the lungs. Exercise, particularly heavy exercise, will increase the total mass of O_3 inhaled per unit time and will change patterns of O_3 deposition in the lungs, thereby causing responses in persons who otherwise might not be affected.

(1) *Respiratory Function Decrements and Symptoms.* The principal responses associated with acute exposures to O_3 are respiratory function decrements and symptoms. As discussed above, individuals exposed to lower levels of O_3 (e.g., 0.12 to 0.15 ppm) typically experience only mild and transient functional decrements. The available data also suggest that many responders would experience only mild to moderate reductions in lung function which may be accompanied by symptoms such as cough, chest tightness, pain on deep inspiration, and throat irritation. At levels above 0.15 ppm O_3 , reductions in lung function and symptoms become more pronounced.

Most healthy individuals experiencing mild to moderate O_3 -induced lung function decrements may not notice such effects due to their substantial reserve capacity; however, individuals who have preexisting respiratory disease or have hyperreactive airways may respond to O_3 exposure sufficiently to restrict normal activity or impair their performance in carrying out tasks. While such possible outcomes are a matter of concern, the staff concluded that the data on individuals with preexisting respiratory disease were limited and should only be considered in developing a margin of safety (U.S. EPA, 1989, p. VII-28).

(2) *Decreased Resistance to Respiratory Infection.* This effect of O_3 has been demonstrated in experimental animal studies. The biological basis for this response appears to be that O_3 or one of its reactive products impairs or suppresses normal bactericidal functions of the pulmonary defense system components (e.g., alveolar macrophages). This results in prolonging the life of the infectious agent, thus permitting its multiplication and ultimately resulting in death in this animal infectivity model. Because these effects have been reported in several species of animals and are potentially serious, the EPA remains concerned about the possibility of increased susceptibility to respiratory infection in humans in response to ambient O_3 exposures. Quantitative extrapolation of these effects reported in animals to human health effects remains limited by inadequate knowledge of dosimetry and species sensitivity differences.

(3) *Pulmonary Inflammation and Structural Changes in Respiratory Tissue.* Pulmonary inflammation and structural changes in respiratory tissue have also been a focus of concern. One series of studies (Koren et al., 1988 a,b,c) reported biochemical and cellular indicators of pulmonary inflammation in healthy adult males exposed for 2 hours to 0.4 ppm O_3 during intermittent, heavy exercise ($\dot{V}_E=70$ liters per minute); however, acute exposures involving lower concentrations have not been tested. While these studies of inflammatory response prompt concern that repeated or chronic exposures to high levels of O_3 may result in permanent lung tissue damage, such a linkage has not been fully investigated and, therefore, remains hypothetical.

c. Proposed decision. Based on the staff's assessment of the health information discussed above and taking into account the advice and recommendations that the CASAC provided in 1989, the Administrator proposes to determine under section 109(d)(1) that revisions of the existing 1-hour primary standard are not appropriate at this time. The standard level is below those levels where controlled human exposure studies found substantial changes in pulmonary function and symptoms. In reaching this conclusion, the Administrator is mindful that the mean group response observed in the controlled human studies up to 0.15 ppm O_3 would at most be characterized as mild, and that most of the responders within this population of normal healthy individuals reportedly experienced only mild to moderate responses under very heavy exercise. Although there is a difference of opinion among the EPA's scientific advisors as to the significance of decrements in lung function in the range of 10 to 20 percent when accompanied by symptoms, it is the Administrator's judgment that the lesser effects associated with exposure to O_3 in the range of 0.12 ppm to 0.15 ppm observed in the controlled human studies do not constitute adverse effects for purposes of section 109 of the Act.

The Administrator also considered other sensitive population groups whose response to O_3 has not been fully characterized. Although some epidemiology studies considered in the 1986 Air Quality Criteria Document and its Supplement suggest that exposure to O_3 at ambient concentrations may result in the aggravation of asthma and preexisting respiratory disease, the Administrator concurred with the staff view that these studies are limited by uncertainties about individual exposure levels and the role of other pollutants

and, therefore, should not be generalized to the entire population. In addition, although individuals with preexisting lung disease are not more responsive to O_3 than healthy persons, the same small change in pulmonary function may have more impact on people whose lung function is already compromised. While all of these studies suggest that these sensitive groups may be at somewhat greater risk at levels of 0.12 ppm O_3 and higher, compared to normal healthy individuals in controlled human exposure studies, in the Administrator's judgment these studies do not provide a sufficient basis for lowering the existing standard.

As discussed above, the emerging information on 8-hour and chronic or seasonal exposures is also of concern. In view of this, the Administrator considered to what extent attainment of the current standard would reduce 8-hour and longer-term seasonal averages. Air quality relational analyses indicate that multihour averages of O_3 would be reduced if the current 1-hour standard is attained (see U.S. EPA, 1989, Appendix A). As control programs are implemented to reduce 1-hour O_3 peak levels, 8-hour and longer-term seasonal averages also will be reduced because most control strategies aimed at attaining the existing 1-hour standard are not time-of-day specific. Such programs will affect every hour of the day to a greater or lesser extent and, thus, lower the entire distribution of O_3 air quality and not just peak concentrations. As a result, the Administrator believes the major control programs required by the 1990 Clean Air Act Amendments will result in notable progress towards bringing the country into attainment with the existing 1-hour standard and should also lower O_3 levels associated with 8-hour and seasonal averaging periods.

Given the above, and the preliminary nature of the information currently assessed in the air quality criteria on 6- to 8-hour exposures, the Administrator is proposing to determine under section 109(d)(1) that revision of the existing 1-hour NAAQS is not appropriate at this time. The Administrator also intends (1) to proceed as rapidly as possible with assessment of the new studies so that a more informed decision can be made on the need for additional protection from 6- to 8-hour and chronic exposures, and (2) to focus on fully implementing the control programs mandated by the Clean Air Act Amendments of 1990.

For the above reasons, the Administrator proposes to determine under section 109(d)(1) that revisions of the existing 1-hour primary standard are

not appropriate at this time. As discussed more fully above, this proposed determination is based on the EPA's review of the health effects information contained in the 1986 Air Quality Criteria Document and its Supplement, which includes an evaluation of key studies published through early 1989; the 1989 Staff Paper; and the advice and recommendations of the CASAC on these documents. The Administrator has not taken into account more recent studies on the health effects of O_3 , which have not undergone the rigorous and comprehensive assessment, including the CASAC review, necessary to incorporate them into a new criteria document. As discussed previously, it would be premature to draw conclusions on either the scientific merit or the ultimate implications of these studies prior to such an assessment, which could not be completed in the time available under the court order in the *American Lung Association* case.

The Administrator also considered and concurs with the staff recommendations that O_3 should remain as the surrogate for controlling ambient concentrations of photochemical oxidants and that the existing form of the standard should be retained.

B. The Secondary Standard

The Administrator also proposes to determine that revisions of the existing 1-hour secondary standard are not appropriate at this time. The rationale for this action is threefold: (1) the appropriate form and level for a new standard to protect crops and forest ecosystems are difficult to determine, given the data currently reviewed by the CASAC; (2) new research is currently under way to reduce this uncertainty for forest ecosystems; and (3) tightening the current 1-hour standard as an interim measure would provide only marginal improvement because a 1-hour averaging period is not the most appropriate exposure indicator, as discussed below, for the full range of exposures (e.g., long-term, repeated peaks) and will be seriously reconsidered in the next review. Section 109(b)(2) of the Act requires the EPA to set a secondary NAAQS at a level that, in the judgment of the Administrator, is requisite to protect the public welfare from any known or anticipated adverse effects. The term "public welfare," which is defined in section 302(h) of the Act, includes, among other things, effects on soils, water, crops, vegetation, wildlife, visibility, manmade materials, animals, hazards to transportation, and climate, as well as effects on economic

values and on personal comfort and well-being.¹

During the first review of O_3 NAAQS in the late 1970's, the EPA carefully examined the scientific and technical information evaluated in the then-revised air quality criteria concerning O_3 -related damage to vegetation, crops, materials, and visibility. As part of this process, the EPA developed a staff assessment entitled "Evaluation of Alternative Secondary Ozone Air Quality Standards." Based on this assessment and other relevant factors, the EPA promulgated a revised secondary standard on February 8, 1979 (44 FR 8202) that was identical to the revised primary standard of 0.12 ppm in all respects. In reaching this decision, the Administrator concluded that a secondary standard more stringent than the primary standard was not necessary to adequately protect public welfare.

The current review has focused mainly on effects of O_3 on agricultural crops and forests. Consideration has also been given to the effects of O_3 on materials and on personal comfort and well-being.

1. Effects of Agriculture and Forests

a. *Effect on crops.* The 1979 decision to revise the secondary O_3 NAAQS resulted largely from a lack of evidence adequate to retain a standard more stringent than the primary. The 1978 Air Quality Criteria Document identified the need for "a set of standard equations that would relate plant response to pollutant concentration and duration of exposure and would also incorporate the effects of all other factors that control the responses of plants." The 1978 Air Quality Criteria Document also recognizes that "Development of such equations requires a data base sufficient to relate a given dose (concentration of pollutant times duration of exposure) of oxidant (e.g., O_3 , PAN) to some meaningful plant effect" and that "Such equations are not yet available." (U.S. EPA, 1978, p. 264).

To address this fundamental deficiency, in 1980 the EPA initiated a 5-year research program titled the National Crop Loss Assessment Network (NCLAN) to define the relationships between yields of major agricultural crops and O_3 exposure, to assess national economic consequences

¹ It should be emphasized that the relevant statutory goal is the protection of public welfare, and that effects on soils, water, crops, and so forth, even if negative, do not necessarily constitute "adverse" effects on public welfare for purposes of section 109(b)(2). The finding that an effect is adverse is ultimately a judgment to be made by the Administrator.

of the exposure of major agricultural crops to O_3 , and to advance the understanding of the cause-effect relationships that determine crops responses to pollutant exposure. Damage to crops is relevant under section 109(b) to the extent it affects public welfare. The NCLAN research program on crops, completed in 1985, provided valuable exposure-response information on a variety of crops and strengthened the evidence for O_3 -induced yield reductions in important commercial crops species.

Because of this, the NCLAN data base became a principal focus of the current assessment of yield reductions in commercially-important crops exposed to O_3 . Yield reduction or loss is defined as impairment of, or decrease in, the value of the intended use of the plant. This definition includes reduction in aesthetic values, changes in crop quality, and occurrence of foliar injury when foliage is a marketable part of the plant, as well as loss in weight or bulk.

The EPA has analyzed data from the NCLAN to develop predictive equations relating 7-hour seasonal mean O_3 exposures, the indicator used in the NCLAN studies, to crop yield loss. These analyses suggest that a 10 percent mean yield loss occurs for several species when the 7-hour seasonal mean concentration of O_3 exceeds 0.04–0.05 ppm, that grain crops are generally less sensitive to O_3 than other crops, and that sensitivity differences within a species may be as large as a difference between species. In addition to differences in sensitivity among species and cultivars, the available data also suggest the presence of year-to-year variations in plant responses to O_3 (U.S. EPA, 1989, p. X-7).

The scientific community well recognizes that the NCLAN data provide valuable exposure-response information for a variety of crops. However, the adequacy of the 7-hour seasonal mean as an exposure index has been questioned. This seasonal exposure statistic is based on the mean 7-hour daily concentration measured from 9:00 a.m. to 4:00 p.m. averaged over the growing season. The use of a seasonal mean to characterize exposures implies that all exposures over the course of the daylight period are equally effective in inducing plant responses. Several analyses, however, indicate that constant concentrations have less effect on plant growth responses than variable or episodic exposures at equivalent cumulative doses (Musselman et al., 1983; Hogsett et al., 1985). Thus, it is possible for two sites with the same daytime arithmetic mean O_3

concentration to have different estimated crop reductions (Larsen and Heck, 1984). The 7-hour seasonal mean also fails to account for phenological stages of plant development, the impact of peak concentrations, length of episodes, and days between peaks.

In addition to the NCLAN data, the 1986 Air Quality Criteria Document and 1989 Staff Paper also assessed data on the effects of O_3 on crop yield both under more controlled conditions and under ambient air exposures. Data from the controlled studies generally seem to indicate that O_3 concentrations of 0.10 ppm (frequently the lowest concentration used in the studies) for a few hours a day, over a period of several days to several weeks, induce yield loss of 10–55 percent (U.S. EPA, 1989, pp. X-13–X-15). These studies further demonstrate that peak O_3 concentrations cause an effect. Because these studies were conducted in greenhouses or growth chambers, it is difficult to extrapolate the data to field conditions. However, ambient air exposure studies that have been reviewed also confirm that current ambient O_3 levels in many parts of the country can reduce plant yield for some crops. As the current standard is attained, lesser reductions should occur.

b. Forest ecosystems. In addition to effects of O_3 on crops, there is evidence, although regionally limited, that some forest ecosystems have been adversely affected by ambient levels of O_3 . Among the susceptible areas are the mixed conifer forests of the San Gabriel and San Bernardino mountain ranges east of Los Angeles, where O_3 has been identified as the agent responsible for the slow decline and death of the ponderosa pine and the injury of the Jeffrey pine. The decline of pines in the mixed conifer forest in the San Bernardino Mountains suggests that a potential consequence of O_3 stress is a change in the successional patterns and composition of the forest (Miller et al., 1982). Oxidant injury of eastern white pine and other native vegetation has also been observed in the Eastern United States (U.S. EPA, 1989, p. X-25). Several studies have attributed reductions in the growth of annual rings in eastern white pine to the exposure of the trees to O_3 over a period of 10 to 20 years (Mann et al., 1980; McLaughlin et al., 1982; Benoit et al., 1982).

Dendrochronological studies of the decline of red spruce in the northeast and of reduced growth rates of red spruce, balsam fir, and Fraser fir in central West Virginia and western Virginia, also provide further evidence that the reductions in growth and

mortality measurable today probably began at least 20 years ago (Johnson and Siccama, 1983; Adams et al., 1985). In addition, reductions in growth rates of loblolly and short leaf pine have been reported in the piedmont regions of the Southeastern United States (McLaughlin, 1985). The magnitude of the role of O_3 in these cases is unclear.

In regard to these most recent declines in growth, there is currently no agreement as to the trigger factor that precipitated the dieback, mortality, and decreased growth. A number of stresses have been identified, including both natural processes and air pollution (Johnson and Siccama, 1983). Given the regional distribution of O_3 in North America and the frequent occurrence of elevated O_3 concentrations, the potential influence of O_3 on forest ecosystems is of concern. The success and composition of producer species within a community are the keys to "maintaining the integrity of an ecosystem" * * *. Any significant alterations in producers, whether induced by O_3 or other stresses, can potentially affect the consumer and decomposer populations of the ecosystem, and can set the stage for changes in community structure by influencing the nature and direction of successional changes * * * (U.S. EPA, 1986, p. 7-51).

While some of the same plant processes are affected in trees and agriculture crop species, perennial plants, because they live longer, must cope with both short- and long-term stresses, the effects of which can be cumulative, lasting over the years, or can be delayed, not becoming apparent for many years. Likewise, effects can possibly be mitigated through short- or long-term recovery or replacement (U.S. EPA, 1986, p. 7-76). As a result, the permanent vegetation in natural ecosystems receives much greater chronic exposure than the short-lived vegetation that makes up agroecosystems. The single agroecosystem has little resilience to pollutant stress; the natural ecosystem is initially more resistant to pollutant stress because of species diversity, but the longer chronic exposures can disrupt the system. As discussed more fully in the next section, this difference between natural ecosystems and agroecosystems raises a key issue when selecting an appropriate exposure indicator for the secondary standard (U.S. EPA, 1989, p. X-26).

In the CASAC's 1989 closure letter in the 1989 Staff Paper, "the Committee took note of the lack of information on the effects of O_3 on forest ecosystems

and urged support for research to remedy this deficiency."

In response to the CSAAC comments and the deficiencies in the data, the EPA's CERL began a Forest O₃ Research Program to develop a data base on O₃ effects on forests and to review alternative exposure indices for use in formulating an appropriate O₃ secondary standard. The major objectives of the Forest O₃ Research Plan are to (1) Identify the most critical aspects of O₃ exposure dynamics (i.e., level, frequency, duration, time of day) through mechanistic studies of O₃ uptake and the relevance of environmental, genetic and cultural factors; (2) develop exposure-response functions for seedlings, saplings, and mature trees exposed to current and changing O₃ levels and assess the role of size and age in their responses; (3) parameterize a process model of tree growth using the data developed in (1) and (2) to be used in stand-level models to enable prediction of forest or stand-level response to changing O₃ levels; and (4) produce an assessment of risk to forest species of O₃ in the presence of multiple stresses. The long-term chronic exposure research for forest tree species is scheduled to be completed in 1995.

Additional forest tree species O₃ response data will soon be available from several ongoing and future research efforts, including the Southern Commercial Forest Research Program begun under the National Acid Precipitation Assessment Program to look at the combined effects of O₃ and acid rain on forest tree species; the Southern Oxidant Study, which is investigating the atmospheric chemistry behind O₃ formation and the effects of regional O₃ on urban O₃ levels; the 1990 Clean Air Act Spatial Trends Network, which will monitor a suite of atmospheric pollutant levels in a nationwide network; and the Environmental Monitoring and Assessment Program, which will monitor species selected to serve as indicators of forest health to determine the current status of forest ecosystems and determine whether or not changes are taking place.

c. Averaging times and exposure patterns of concern. In terms of protecting agricultural crops and forests, research has demonstrated that there are many factors of O₃ exposure dynamics that must be considered when formulating an appropriate exposure index, and thus, specification of an appropriate averaging time and form of a secondary standard is complex. These factors include short-term peaks, long-term chronic exposures, duration

between peaks, and diurnal and seasonal timing of peaks. In the initial draft of the 1989 Staff Paper, the EPA staff recommended that consideration be given to setting both a 1-hour and a longer-term secondary standard because the relationship between peak values and seasonal averages was generally not predictable with a high degree of confidence; therefore, the enforcement of a 1-hour standard was not believed to adequately reduce high chronic exposure at a particular location. While the CASAC (1989) endorsed the judgment that repeated peak exposures were critical in eliciting responses in agriculture crops, the CASAC's views regarding the appropriateness of a separate long-term standard were less clear. Instead, the CASAC challenged the EPA to identify a single standard formulation that offered protection from both repeated peaks of concern and long-term exposures. The EPA agreed with the CASAC's recommendation to identify a single standard formulation and as a first step analyzed alternative monthly forms of a secondary standard (U.S. EPA, 1989, Appendix A) based on air quality data. The EPA found that the maximum monthly mean of the daily maximum 1-hour averages related well to both repeated peaks and long-term air quality indicators of concern. However, there are little or no effects data for a monthly exposure period.

Subsequently, researchers at the CERL undertook additional analyses of the NCLAN data set. In an extensive retrospective analysis of NCLAN data, Lee et al. (1988a) fit over 600 single-index and general phenologically weighted cumulative impact (GPWCI) indices to response data from seven crop studies. The criterion established for determining "best" exposure indices was that they display the smallest residual sums of square error when the yield-response data were regressed for the various O₃ exposure indices using the Box-Tidwell model.

Lee et al. (1988a) concluded that the top-performing exposure indices were those that (1) cumulate the hourly O₃ concentrations over time, (2) emphasize concentrations of 0.06 ppm and higher, and (3) place the greatest weight on exposures that occur during the plant growth stage. These findings illustrated the importance of including exposure duration, repeated peaks, and periods of increased plant sensitivity when assessing the impact of O₃ on plant growth. Although peak concentrations should be given greater weight, the authors suggested that lower concentrations were important and

should also be included in the calculation of an exposure index.

In response to the CASAC recommendations (CASAC, 1987) Lee et al. (1988b) conducted additional retrospective analyses of the NCLAN data in order to evaluate selected exposure indicators. The results indicated that while the GPWCI indices best related plant response to O₃ exposure, there were other indices that were near optimal. These indices included a sigmoid-weighted integrated index (SIGMOID) centered at 0.062 ppm, which the staff concluded was too complex for use as an ambient air quality standard, and cumulative indices that sum all concentrations of 0.06 (or 0.07) ppm or higher (SUMO6 and SUMO7). These latter indices performed well, suggesting that lower, longer-term ambient O₃ levels are important in triggering plant response and should be included in an exposure index. These results support the conclusions reached by Lefohn et al. (1988) and Lee et al. (1987), who used the NCLAN data and cumulation indices with sigmoid and allometric weights in demonstrating the importance of peak concentrations in determining plant response.

The integrated exposure indices (SUMO6 and SUMO7) are functions of exposure duration and concentration that relate various yield losses calculated from experimental data to exposure "seasons." Lee et al. (1988c) believe experiments replicated in time and/or space that differ in exposure duration but have the same SUMO6 or SUMO7 values should produce identical predicted relative yield losses. Because these integrated indices capture key components of exposure, they are more adequate than a 7-hour mean as descriptors of plant response; they are also attractive from a regulator perspective because they are simple and easy to implement.

Lee et al. (1988b) also examined the relationships among the various air quality indicators, in response to the CASAC's interest in finding an indicator that correlates well with short-term peak, multiple peak, and long-term averages. Results indicate that fair to strong associations exist between the two cumulative indices (SUMO6 and SUMO7) and the peak and mean indices: second highest daily maximum (HDM2) and 7-hour seasonal average (M7). The integrated indices, SUMO6 and SUMO7, are strongly related to M7 and less related to HDM2, because the relationship between SUMO7 and HDM2 falls just below the level defined by the authors (Lee et al., 1988b) as indicative of a strong association. These

results suggest that SUMO6 and SUMO7 have potential for a standard that protects against adverse effects from repeated peak and long-term exposures. It should be noted, however, that this assessment is based solely on agricultural crops because of the lack of information to fully assess forest effects. Crop species are more sensitive to high level, short-term peaks of O_3 than perennial plants, which appear to be affected more by chronic exposures to lower levels of O_3 or a combination of both short-term peaks and long-term exposures. Therefore, it is not clear that exposure indices based only on agricultural crops are appropriate in relating ambient concentrations and exposure to the response of perennial plants.

2. Other Welfare Effects

a. *Materials.* Ozone effects on materials have been studied for the last 3 decades. This broad data base has identified several types of materials that are sensitive to O_3 exposure.

The effects of O_3 on elastomers (e.g., automobile tires, protective electrical coverings, etc.) have been the best documented. Ozone causes elastomers to harden, become brittle or cracked, and lose physical integrity. These effects increase in a dose-related fashion (i.e., the product of concentration and exposure duration) and have been shown to be accelerated by the presence of mechanical stress, high humidity, atmospheric pressure, sunlight, and other pollutants. In response, manufacturers have reformulated their products to withstand greater doses of O_3 , thus mitigating the effects of O_3 on elastomers.

The reaction of dyes to O_3 is a complex function of O_3 concentration, relative humidity, the presence of other gaseous pollutants, the type of dye and the resistance of the material in which the dye is incorporated. The degradation of fibers from exposure to O_3 is poorly characterized. In general, most synthetic fibers such as modacrylic and polyester are relatively resistant; and cotton, nylon, and acrylic fibers show variable sensitivities to the gas. Anthraquinone dyes incorporated into cotton and nylon fibers appear to be the most sensitive to O_3 damage.

Paint is another material that has been investigated for O_3 damage. In comparison to other materials, the effect of O_3 on paints is small and has a negligible effect on the useful life of the material coated.

Upon reviewing the available scientific technical information on effects of O_3 on materials, the 1989 Staff Paper concluded that "There appears to

be no threshold level below which materials damage will not occur; exposure of sensitive materials to any non-zero concentration of O_3 (including natural background levels) can produce effects if the exposure duration is sufficiently long. However, the slight acceleration of aging processes of materials which occurs at the level of the NAAQS is not judged to be significant or adverse. Consequently, the staff concludes that materials data should not be used as a basis for defining an averaging time and concentration for the secondary standard and that the secondary standard should be based on protection of vegetation." (U.S. EPA, 1989, pp. XI-16 to XI-17). The Administrator agrees with this staff conclusion.

b. *Personal comfort and well-being.* Effects on personal comfort and well-being, as defined by human symptomatic effects, have been observed in controlled human exposure studies at O_3 levels in the range of 0.12–0.15 ppm for 1–3 hours of exposure at very heavy exercise, and at somewhat lower levels in prolonged human exposure studies (at moderate exercise), and in field studies. These effects include nose and throat irritation, chest discomfort, and cough. As recommended by the CASAC and the EPA staff, these effects have been considered health effects and have been taken into account during the review of the primary standard for O_3 .

3. Proposed Decision on the Secondary Standard

As previously noted, the Administrator is proposing to determine under section 109(d)(1) that revision of the existing 1-hour secondary standard is not appropriate at this time. In reaching this proposed decision, the Administrator has carefully considered the welfare effects information assessed in the 1986 Criteria Document and its Supplement, the 1989 Staff Paper assessment, and the advice and recommendations of the CASAC (CASAC, 1989). A principal reason for this proposed decision is the absence of sufficient information in the 1986 Criteria Document and its Supplement to specify a new form, averaging period, and level of a secondary standard. Research currently under way will provide significant information on key aspects of O_3 exposure dynamics that are important for assessing the effects of O_3 on forest ecosystems. When this information becomes available and is incorporated into the air quality criteria during the next review, a more informed judgment can be made as to whether

revision of the secondary standard is appropriate.

The Administrator also carefully considered the available information on the effects of O_3 on agricultural crops alone. Although the NCLAN studies have provided extensive data on the effects of O_3 on crops, the appropriateness of the seasonal mean exposure indicator used in these studies has been subject to much criticism during the development of revised air quality criteria. Because of this and the other shortcomings of this exposure index that are discussed above, the direct use of the NCLAN data for standard-setting purposes would be inappropriate. The CASAC recognized this and recommended that retrospective analyses be undertaken in order to identify a more appropriate exposure index that would offer protection from both repeated O_3 peaks of concern and long-term O_3 exposures. While these analyses have identified several indicators that show promise, the Administrator concurs with the staff's view that it would be premature to base a change in the form and averaging time of the secondary standard on the preliminary results presented in the Supplement to the 1986 Criteria Document and the Staff Paper. The CASAC also recognized in its closure letter (CASAC, 1989) that further work would be necessary to develop a more appropriate form and averaging period for the secondary standard.

The Administrator also considered tightening the current secondary standard as an interim measure. Throughout the review of the air quality criteria and staff assessment, however, no consensus was reached on an appropriate range of alternative 1-hour standards. The staff had great difficulty throughout the review in developing and justifying alternative levels below that of the current standard due to the lack of data (U.S. EPA, 1989, p. XI-13). In the end, while the staff relied on the preliminary results of the Lee et al. (1988b) study to conclude that the upper-end of the proposed range (0.12 ppm) offers little protection for vegetation (U.S. EPA, 1989, p. XI-14), the staff also determined that the study was too preliminary to serve as a basis for recommending changes in the form and averaging time of the standard. Even if the results of the Lee study provided a sufficient basis for revising the standard downward from 0.12 ppm to 0.10 ppm, as some have suggested, it is the Administrator's judgment that such a change would provide only marginal improvement because a 1-hour averaging period is not the most

appropriate exposure indicator for the full range of exposures, as discussed above, and will be seriously reconsidered during the next standard review. In the interim, it would have imposed a disproportionate and largely meaningless burden on States to review and make appropriate revisions in applicable SIP's.

Given the above information, the Administrator proposes to determine under section 109(d)(1) that revision of the current secondary standard is not appropriate at this time.

III. Continuing Review of Air Quality Criteria and Standards

As previously noted, a large number of new studies on the health and welfare effects of O_3 have been published in the scientific literature, since completion of the 1986 Air Quality Criteria Document, its Supplement, and the 1989 Staff Paper that serve as the basis for today's decision. Among the most pertinent of the new studies are those which address: The effects of prolonged O_3 exposures in controlled human experiments; the impact of O_3 on susceptible subpopulations (e.g., individuals with preexisting respiratory disease), chronic exposure effects in animals; analysis of indicators of yield loss in agricultural crops; and effects of O_3 on forest tree species.

Because of the potential significance of these studies, as well as other ongoing research efforts, the EPA is planning to proceed as rapidly as possible with the next periodic review of the air quality criteria and standards for O_3 . Under the process established in sections 108 and 109 of the Act and refined by the EPA and the CASAC, the EPA will begin by announcing the commencement of the review in the *Federal Register*. After carefully assessing and evaluating the pertinent new studies, the EPA will then prepare a preliminary draft of a revised criteria document and subject it successively to review at expert peer-review workshops, by the public, and by the CASAC. Once the CASAC has reviewed the first external review draft of the revised criteria document, thus providing a preliminary basis for review of the existing standards, the EPA staff will prepare a draft staff paper evaluating the most significant information contained in the draft criteria document and develop recommendations for revisions, if appropriate, to the standards. The first draft of the staff paper and the second external review draft of the criteria document will then be made available for public and CASAC review. Typically at this point, the criteria document is of

sufficient quality for the CASAC to reach "closure" and will provide the basis for completing the staff paper that in turn will be reviewed by the CASAC. The CASAC will then submit its advice and recommendations to the Administrator. The overall process will take an estimated 2-3 years. Although the process is lengthy and rigorous, the EPA believes it is both necessary and appropriate given applicable statutory requirements, the volume of material requiring careful evaluation, and the extraordinary environmental, economic, and social importance of O_3 NAAQS.

IV. Federal Reference Method

The EPA is not proposing any revisions to the Federal reference measurement method for O_3 described in appendix D to 40 CFR part 50, as amended on February 18, 1975 (40 FR 7042) and further amended on February 8, 1979 (44 FR 8221).

V. Regulatory and Environmental Impact Analysis

Under Executive Order 12291, the EPA must judge whether an action is a "major" regulation for which a Regulatory Impact Analysis (RIA) is required. The EPA has judged the proposed O_3 NAAQS decision is not a major action because there are no additional costs or environmental impacts as a result of not revising the standards. The EPA, therefore, has deemed unnecessary the preparation of either a RIA or an Environmental Impact Statement.

VI. Impact on Small Entities

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 35 seq., the EPA must prepare initial and final regulatory flexibility analyses assessing the impact of certain rules on small entities. These requirements are inapplicable to rules or other actions for which the EPA is not required by the Administrative Procedure Act (APA), 5 U.S.C. 551 et seq., or other law to publish a notice of proposed rulemaking (5 U.S.C. 603(a), 604(a)). The EPA is following rulemaking procedures in deciding whether to revise the O_3 standards in light of the court order in the *American Lung Association* case and the importance of the issue. Under section 307(d) of the Act, as the EPA interprets it, neither the APA nor the Act requires rulemaking procedures where the Agency decides to retain existing NAAQS without change. Accordingly, the EPA has determined that the impact assessment requirements of the RFA are inapplicable to this proposed decision.

VII. Other Reviews

This proposed decision was submitted to the Office of Management and Budget (OMB) for review. Any written comments from OMB and the EPA written responses to these comments are available for public inspection at the EPA's Central Docket Section (Docket No. A-92-17), South Conference Center, room 4, Waterside Mall, 401 M Street SW., Washington, DC.

List of Subjects in 40 CFR Part 50

Air pollution control, Carbon monoxide, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

Dated: August 1, 1992.

William K. Reilly,
Administrator.

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Appendix I

May 1, 1989.

The Honorable William K. Reilly,
Administrator

U.S. Environmental Protection Agency, 401 M
Street, SW., Washington, DC 20460.

Dear Mr. Reilly: I am pleased to transmit via this letter the advice of the Clean Air Scientific Advisory Committee (CASAC) concerning the National Ambient Air Quality Standards for Ozone. CASAC has reviewed and offered comments directly to EPA staff on the EPA criteria document "Air Quality Criteria for Ozone and Other Photochemical Oxidants (1986)," the draft "Criteria Document Supplement (1988)," and the Office of Air Quality Planning and Standards staff position paper "Review of the National Ambient Air Quality Standards for Ozone Assessment of Scientific and Technical Information (1988)" and related support documents.

CASAC previously reached closure on the 1986 Criteria Document. At a meeting held on December 14-15, 1988, CASAC came to closure on the "Criteria Document Supplement (1988)" and the 1988 Staff Position Paper and concluded that they provide an adequate scientific basis for EPA to retain or revise primary and secondary standards for ozone. While reaching closure at this time, the Committee did note an emerging data base on the acute health effects resulting from 6-plus hours of ozone exposure, providing evidence of the possible need for a standard with a 6-8 hour averaging time. However, it was the Committee's view that it would be some time before enough of this developing information would be published in scientific journals to receive full peer review and, thus, be suitable for inclusion in a criteria document. CASAC concluded such information can better be considered in the next review of the ozone standards.

CASAC did not reach a consensus opinion on endorsement of the staff position paper recommendation that "the range of 1-hour average ozone levels of concern for standard setting purposes is 0.08-0.12 ppm for a primary standard."

The opinion of the CASAC Ozone Review Committee was divided with regard to the upper range of the standard with eight individuals favoring a range with an upper value of 0.12 ppm, three individuals favored an upper bound in the range of 0.10-0.12 ppm, four individuals favored an upper bound value no higher than 0.10 ppm, and one individual abstained from offering an opinion. Several individuals who supported an upper value of 0.12 ppm as well as all of the other individuals who favored a lower value for the upper end of the range expressed the view that at 0.12 ppm there was little or no margin of safety. As you are aware, the margin of safety is intended to provide protection against adverse effects which have not yet been uncovered by research and effects whose medical significance is a matter of disagreement. Finally, several members of the subcommittee favored development of a standard with a more statistically robust upper bound on the annual distribution of ozone concentrations rather than reliance on the current expected exceedance form of the standard. While the Committee offers no further advice on what form the Agency should consider, we would caution you against any form which alters the degree of health protection afforded by the current standard.

CASAC had substantial discussion of the issue of what are or are not adverse health effects. This discussion was aided by the presentation of this issue in the staff position paper. Within CASAC there was diversity of opinion; some members felt that healthy individuals experience adverse effects when ozone exposure induced any of the responses categorized as moderate (i.e., >10% decrement in FEV₁ or mild to moderate respiratory symptoms) in the staff position paper, while a few members believed that adverse effects would not be experienced until ozone induced more severe effects (i.e., >20% decrement in FEV₁ and moderate to severe respiratory symptoms). The view of some individuals on this matter was influenced by recognition that resolution of the adverse health effect issue represents a blending of scientific and policy judgments and, thus, we feel it appropriate to inform you of the range of our views on this matter.

Of particular concern to CASAC is the potential for effects arising from exposures to ozone with daily peak concentrations at or near 0.12 ppm for periods of 6-8 hours and with co-exposure to other pollutants. This concern is due to air quality analyses which have shown that even in areas which do not repeatedly exceed the ozone standard, ozone concentrations can remain close to 0.12 ppm for several hours per day for extended periods of time in summer. There was concern based on recent controlled human exposure, epidemiology and toxicology studies, that such prolonged exposures could result in increased respiratory impairment. Further, for people exposed to these ozone concentrations over a lifetime, the possibility that chronic irreversible effects may result is

of concern, although such changes have not been demonstrated.

The Committee noted that the Criteria Document Supplement failed to cite and discuss a group of "ecological" epidemiological studies of the effects of ozone on various measures of human health such as hospitalizations for respiratory illnesses or exacerbation of chronic respiratory problems. Although these studies have obvious limitations in establishing cause and effect relationships, they have certain strengths which can aid in regulatory decision-making. Studies of this type should be discussed and evaluated in future criteria documents as a complementary source of information.

While reaching closure on the staff position paper recommending a 1-hour standard, CASAC urged that the Agency provide increased support for research that will prove an improved scientific basis for evaluating the need for standards with multi-hour or seasonal averaging times. Clearly, the obvious, research on this critical environmental health issue must be supported now in order for results to be available for consideration in the next 5-year review cycle. CASAC has enumerated these research needs in some detail in a September 1987 submission to the Agency. The Committee feels these research recommendations are still valid and should be incorporated as expeditiously as possible into the Agency research program.

CASAC did not reach a consensus opinion on endorsement of the staff position paper recommendation of "a 1-hour averaging time standard in the range of 0.06-0.12 ppm" for a secondary standard. The CASAC Ozone Welfare Effects Subcommittee that considered this matter reached a divided opinion; two favored a range with an upper value of 0.12 ppm, three favored an upper value of less than 0.12 ppm, and five favored an upper value of 0.10 ppm. The Committee noted that the form of the standard was of critical importance in protecting against ozone effects on vegetation. The Committee was of the opinion that a cumulative seasonal standard would be more appropriate than a 1-hour standard and felt that such a standard could be developed. CASAC favored issuance of a cumulative seasonal standard form assuming its development would not further delay the standard setting process. If this form of standard cannot be developed in time for the current review, the Committee is of the opinion that you should give serious consideration to setting a 1-hour secondary standard with a maximum of 0.10 ppm. The Committee took note of the lack of information on the effects of ozone on forest ecosystems and urged support for research to remedy this deficiency.

In closing, I would like to briefly comment on CASAC's failure to reach a consensus as to the appropriate range for setting the ozone standards. This lack of consensus is reflective of major deficiencies in our knowledge regarding health and welfare effects of long-term exposure (beyond a few hours) to ozone. The data base is very large and adequate for knowledgeable individuals to reach agreement on the effects of acute

exposure to ozone in the range appropriate for setting a 1-hour standard. However, there is not an adequate data base on the effects of multiple hour or seasonal exposures to ozone, especially as regards whether such exposures may produce chronic health effects. This is especially troubling since such long-term exposures to ozone occur in many parts of the United States and involve many millions of people and thousands of acres of crop and forest lands. As a result, there continues to be concern for the public health and welfare threat which may be posed by chronic exposure to ozone. It is critical that the data base on health and welfare effects related to multiple hour, seasonal and lifetime exposures of ozone be increased through an accelerated and expanded research effort. This must be done so that future considerations of ozone standards will derive from a stronger scientific base.

CASAC recognizes that your statutory responsibility to set standards requires public health policy judgments in addition to determinations of a strictly scientific nature. While the Committee is willing to further advise you on the ozone standards, we see no need, in view of the already extensive comments provided, to review the proposed ozone standards prior to their publication in the Federal Register. In this instance, the public comment period will provide sufficient opportunity for the Committee to provide any additional comments or review that may be necessary.

CASAC would appreciate being kept informed of progress on establishing revised or new ozone standards and plans for research on ozone effects. Please do not hesitate to contact me if CASAC can be of further assistance on this matter.

Sincerely,

Roger O. McClellan,

Chairman, Clean Air Scientific Advisory Committee.

[FR Doc. 18932 Filed 8-7-92; 8:45 am]

BILLING CODE 6560-50-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1002

[Ex Parte No. 246 (Sub-No. 10)]

Regulations Governing Fees For Services Performed in Connection With Licensing and Related Services—1992 Update

AGENCY: Interstate Commerce Commission.

ACTION: Proposed rules.

SUMMARY: In this proceeding, the Commission proposes the 1992 user fee update. The fee increases here result from the implementation of the update formula set forth in 49 CFR 1002.3(d). Because final rules have been adopted in Safety Fitness Policy, 8 I.C.C.2d 123 (1991), the Commission now is proposing to implement the filing fee increases for

the permanent and emergency temporary motor carrier operating authority applications and motor carrier finance proceedings which were deferred in Regulations Governing Fees for Services—1990 Update, 7 I.C.C.2d 3 (1990), and Regulations Governing Fees For Services—1991 Update, 8 I.C.C.2d 13 (1991). The Commission also is proposing to eliminate the caps on the fees for rail finance and abandonment proceedings and complaint and complaint-type declaratory proceedings, which were adopted in Regulations Governing Fees For Services—1989 Update, 5 I.C.C.2d 817 (1989).

DATES: Comments must be received by September 9, 1992.

ADDRESSES: Send an original and 10 copies of comments to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Kathleen M. King, 202-927-5493 (TDD for hearing impaired: 202-927-5721).

SUPPLEMENTARY INFORMATION:

The Commission preliminarily concludes that these proposed fee increases will not have a significant economic impact on a substantial number of small entities because the Commission's regulations provide for the waiver of filing fees when the required showing of financial hardship or public interest criteria is established.

This decision will not have a significant impact upon the quality of the human environment or the conservation of energy resources.

Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write, call, or pick up in person from: Office of the Secretary, room 2215, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 927-7428. [Assistance for the hearing impaired is available through TDD services (202) 927-5921.]

List of Subjects in 49 CFR Part 1002

Administrative practice and procedure, Common carriers, Freedom of information, User fees.

Decided: July 1, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett. Vice Chairman McDonald commented with a separate expression. Commissioner Simmons dissented with a separate expression.

Sidney L. Strickland, Jr.,
Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1002, of the Code of

Federal Regulations is proposed to be amended as follows:

PART 1002-FEES

1. The authority citation for part 1002 continues to read as follows:

Authority: 5 U.S.C. 552(a)(4)(A), 5 U.S.C. 553, 31 U.S.C. 9701, and 49 U.S.C. 10321.

2. Section 1002.1 is amended by revising paragraph (b) and the chart in paragraph (f)(6) to read as follows:

§ 1002.1 Fees for records search, review, copying, certification, and related services.

(b) Service involved in examination of tariffs or schedules for preparation of certified copies of tariffs or schedules or extracts therefrom at the rate of \$20.00 per hour.

(f) * * *

(6) * * *

Grade	Rate
GS-1	\$6.23
2	6.78
3	7.85
4	8.58
5	9.61
6	10.70
7	11.90
8	13.18
9	14.55
10	16.03
11	17.61
12	21.10
13	25.09
14	29.65
15 and over	34.88

3. Section 1002.2 is amended by revising paragraph (f) to read as follows:

§ 1002.2 Filing fees.

(f) Schedule of filing fees.

Type of proceedings	Fees
Part I: Non-Rail Applications for Operating Authority or Exemptions	
(1) An application for motor carrier operating authority; a certificate of registration including a certification of registration for certain foreign carriers; broker authority; water carrier operating or exemption authority; or household goods freight forwarder authority	\$250
(2) A fitness only application for motor common carrier authority under 49 U.S.C. 10922(b)(4)(E) or motor contract authority under 49 U.S.C. 10923(b)(5)(A) to transport food and related products	100
(3) A petition to interpret or clarify an operating authority under 49 CFR 1160.64	2,400

Type of proceedings	Fees	Type of proceedings	Fees
(4) A request seeking the modification of operating authority only to the extent of making a ministerial correction, when the original error was caused by applicant, a change in the name of the shipper or owner of a plant site, or the change of a highway name or number	40	(28)-(32) [Reserved].	
(5) A petition to renew authority to transport explosives under 49 U.S.C. 10922 or 10923	200	Part IV: Rail Application for Operating Authority	
(6) An application to remove restriction or broaden unduly narrow authority	250	(33)(i) An application for a certificate authorizing the construction, extension, acquisition, or operation of lines of railroad. 49 U.S.C. 10901	3,200
(7) An application for authority to deviate from authorized regular-route authority under 49 U.S.C. 10923(a)	100	(ii) Exempt transaction under 49 CFR 1150.31	1,700
(8) An application for motor carrier or water carrier temporary authority under 49 U.S.C. 10928(b)	100	(34) A Feeder Line Development Program application filed under 49 U.S.C. 10910(b)(1)(A)(i)	3,900
(9) An application for motor carrier emergency temporary authority under 49 U.S.C. 10928(c)(1)	80	(35) A Feeder Line Development Program application filed under 49 U.S.C. 10910(b)(1)(A)(ii)	2,200
(10) An extension of the time period during which an outstanding application for emergency temporary authority as defined in 49 U.S.C. 10928(c)(1) may continue	20	(36)-(37) [Reserved].	
(11) Request for name change of carrier, broker, or household goods freight forwarder	9	Part V: Rail Applications To Discontinue Transportation Services	
(12) A notice required by 49 U.S.C. 10524(b) to engage in compensated intercorporate hauling including an updated notice required by 49 CFR 1167.2	60	(38) An application for authority to abandon all or a portion of a line of railroad or operation thereof filed by a railroad (except applications filed by Consolidated Rail Corporation pursuant to the North East Rail Service Act [Subtitle E of Title XI of Pub. Law 97-35], bankrupt railroads, or exempt abandonments under 49 CFR 1152.50)	7,100
(13) A notice of intent to operate under the agricultural cooperative exemption in 49 U.S.C. 10526(a)(5)	60	(39) An application for authority to abandon all or a portion of a line of railroad or operation thereof filed by Consolidated Rail Corporation pursuant to North East Rail Service Act	200
(14) Reserved		(40) Abandonments filed by bankrupt railroads 49 CFR 1152.40	800
(15) A joint petition to substitute applicant in a pending operating rights proceeding	25	(41) Exempt abandonments. 49 CFR 1152.50	4,100
(16) [Reserved].		(42) A notice or petition to discontinue passenger train service	10,000
Part II: Non-Rail Applications To Discontinue Transportation		(43) [Reserved].	
(17) A notice or petition to discontinue ferry service under 49 U.S.C. 10908	10,000	Part VI: Rail Applications To Enter Upon a Particular Financial Transaction or Joint Arrangement	
(18) A petition to discontinue motor carrier of passenger transportation in one state	1,000	(44) An application for use of terminal facilities or other applications under 49 U.S.C. 11103	8,400
(19) [Reserved].		(45) An application for the pooling or division of traffic. 49 U.S.C. 11342	4,500
Part III: Non-Rail Applications To Enter Upon a Particular Financial Transaction or Joint Arrangement		(46) An application for two or more carriers to consolidate or merge their properties or franchises (or a part thereof) into one corporation for ownership, management, and operation of the properties previously in separate ownership. 49 U.S.C. 11343:	
(20) An application for the pooling or division of traffic	1,900	(i) Major transaction	164,700
(21) An application involving the purchase, lease, consolidation, merger, or acquisition of control of a motor or water carrier or carriers under 49 U.S.C. 11343	900	(ii) Significant transaction	32,900
(22) An application for approval of a non-rail rate association agreement, 49 U.S.C. 10706	12,200	(iii) Minor transaction	2,700
(23) An application for approval of an amendment to a non-rail rate association agreement:		(iv) Exempt transaction [49 CFR 1180.2(d)]	650
(i) Significant amendment	2,000	(v) Responsive application	2,700
(ii) Minor amendment	40	(47) An application of a noncarrier to acquire control of two or more carriers through ownership of stock or otherwise. 49 U.S.C. 11343:	
(24) An application for temporary authority to operate a motor or water carrier. 49 U.S.C. 11349	200	(i) Major transaction	164,700
(25) An application to transfer or lease a certificate or permit, including a certificate of registration, and a broker's license under 49 U.S.C. 10926, or a transfer of a water carrier exemption authorized under 49 U.S.C. 10542 and 10544	250	(ii) Significant transaction	32,900
(26) [Reserved].		(iii) Minor transaction	2,700
(27) A petition for exemption under 49 U.S.C. 11343(e)	250	(iv) Exempt transaction [49 CFR 1180.2(d)]	650
		(v) Responsive application	2,700
		(48) An application to acquire trackage rights over, joint ownership in, or joint use of, any railroad lines owned and operated by any other carrier and terminals incidental thereto. 49 U.S.C. 11343:	
		(i) Major transaction	164,700
		(ii) Significant transaction	32,900
		(iii) Minor transaction	2,700

Type of proceedings	Fees
(iv) Exempt transaction [49 CFR 1180.2(d)]	650
(v) Responsive application	2,700
(49) An application of a carrier or carriers to purchase, lease or contract to operate the properties of another, or to acquire control of another by purchase of stock or otherwise. 49 U.S.C. 11343:	
(i) Major transaction	164,700
(ii) Significant transaction	32,900
(iii) Minor transaction	2,700
(iv) Exempt transaction [49 CFR 1180.2(d)]	650
(v) Responsive application	2,700
(50) An application for a determination of fact of competition, 49 U.S.C. 11321(a)(2) or (b)	32,900
(51) An application for approval of a rail rate association agreement. 49 U.S.C. 10706	31,000
(52) An application for approval of an amendment to a rail rate association agreement. 49 U.S.C. 10706:	
(i) Significant amendment	5,700
(ii) Minor amendment	40
(53) An application for authority to hold a position as officer or director. 49 U.S.C. 11322	300
(54)(i) An application to issue securities; an application to assume obligation or liability in respect to securities of another; an application or petition for modification of an outstanding authorization for competitive bidding requirements of Ex Parte No. 158, 49 CFR Part 1175, 49 U.S.C. 11301.	1,400
(ii) An exempt transaction under 49 CFR Part 1175	650
(55) A petition for exemption (other than a rulemaking) filed by rail carriers. 49 U.S.C. 10505:	
(i) Financial exemption petitions	4,100
(ii) Abandonment exemption petitions	5,600
(iii) Construction, extension, acquisition, or operation of a rail line	7,200
(iv) Other exemption	3,500
(56)-(59) [Reserved]	
Part VII: Formal Proceedings	
(60) A complaint alleging unlawful rates or practices of carriers, property brokers, or freight forwarders of household goods	5,900
(61) A complaint seeking or a petition requesting institution of an investigation seeking the prescription or division of joint rates, fares, or charges. 49 U.S.C. 10705(1)(1)(A)	3,900
(62) A petition for declaratory order:	
(i) A petition for declaratory order involving dispute over an existing rate or practice which is comparable to a complaint proceeding	7,000
(ii) All other petitions for declaratory order	1,200
(63) Requests for nationwide and regional collectively filed general rate increases and major rate restructures accompanied by supporting cost and financial information justifying the increases	6,800
(64) A petition for exemption from filing tariffs by bus carriers	250
(65) An application for shipper antitrust immunity. 49 U.S.C. 10706(a)(5)(A)	3,100
(66) Petition for review of state regulation of intrastate rates, rules, or practices filed by interstate rail carriers. 49 U.S.C. 11501	1,800
(67) Petition for review of state regulation of intrastate rates, rules, or practices filed by interstate bus carriers. 49 U.S.C. 11501	1,800

Type of proceedings	Fees
(68)-(71) [Reserved]	
Part VIII: Informal Proceedings	
(72) An application for authority to establish released value rates or ratings under 49 U.S.C. 10730 (Except that no fee will be assessed for applications seeking such authority in connection with reduced rates established to relieve distress caused by drought or other natural disaster)	550
(73) An application for special permission for short notice or the waiver of other tariff publishing requirements	50
(74) The filing of tariffs, rate schedules, contracts and/or contract summaries, including supplements	19
(75) Special docket applications from rail and water carriers. (There is no fee for requests involving sums of \$25,000 or less)	60
(76) Informal complaint about rail rate application	250
(77) (i) An application for original qualification as self-insurer for bodily injury and property damage insurance (BI&PD)	3,300
(ii) An application for original qualification as self-insurer for cargo insurance	300
(78) A service fee for insurer, surety or self insurer accepted certificate of insurance, surety bond, or other instrument submitted in lieu of a broker surety bond. The fee is based on a formula of \$10 per accepted certificate of insurance or surety bond as indication of ICC insurance activity	110
(79) A petition for waiver of any provision of the lease and interchange regulations. 49 CFR part 1057	350
(80) A petition for reinstatement of revoked operating authority	60
(81)-(82) [Reserved]	
(83) Petition for reinstatement of a dismissed operating rights application	350
(84) Filing of documents for recordation. 49 U.S.C. 11303 and 49 CFR 1177.3(c)	116
(85) Valuations of railroad lines in conjunction with purchase offers in abandonment proceeding	1,200
(86) Informal opinions about rate applications (all modes)	40
(87)-(95) [Reserved]	
Part IX: Services	
(96) Messenger delivery of decision to a railroad carrier's Washington, DC, agent	112
(97) Request for service list for proceedings	9
(98) Requests for copies of the one-percent carload waybill sample	100
(99) Verification of surcharge level pursuant to Ex Parte No. 389, Procedures for Requesting Rail Variable Cost & Revenue Determination for Joint Rates Subject to Surcharge or Cancellation	17
(100) Application fee for Interstate Commerce Commission Practitioners' Exam	60
¹ Per series transmitted. ² Per accepted certificate or other instrument submitted in lieu of a broker surety bond. ³ Per document. ⁴ Per delivery. ⁵ Per list. ⁶ Per movement verified.	
[FR Doc. 92-18949 Filed 8-7-92; 8:45 am]	
BILLING CODE 7035-01-M	

49 CFR Part 1180

[Ex Parte No. 282 (Sub-No. 17)]

Railroad Consolidation Procedures: Definition of, and Requirements Applicable to, "Significant" Transactions**AGENCY:** Interstate Commerce Commission.**ACTION:** Notice of proposed rulemaking.

SUMMARY: The Commission proposes to revise the definition of "significant transaction" in rail carrier consolidation cases, and to eliminate certain requirements presently applicable to applications seeking approval of significant transactions. The revision of the definition will rationalize the rail carrier consolidation scheme, and the elimination of the requirements will relieve rail carriers of the burden of submitting information not relevant to the statutory standard applicable to such cases.

DATES: Comments must be submitted by September 9, 1992.

ADDRESSES: Send an original and 10 copies of comments referring to Ex Parte No. 282 (Sub-No. 17) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927-5660, [TDD for hearing impaired: (202) 927-5721].

SUPPLEMENTARY INFORMATION:

Additional information is contained in the Commission's decision. To receive a copy of the full decision, write to, call, or pick up in person from: Office of the Secretary, room 2215, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 927-7428. (Assistance for the hearing impaired is available through TDD services (202) 927-5721).

Environmental and Energy Considerations

We preliminarily conclude that the proposed action will not significantly effect either the quality of the human environment or the conservation of energy resources.

Initial Regulatory Flexibility Analysis

Pursuant to 5 U.S.C. 603, we are required to examine the impact of a proposed action on small entities. We preliminarily conclude that the action proposed in this proceeding will not have a significant impact on a substantial number of small entities.

To the limited extent that the proposed action will have an impact on small entities, that impact will be

positive one. The primary purpose of the proposed action is to eliminate, in most cases, certain burdensome financial information requirements now imposed on applicants seeking approval for significant transactions. The lessening of the regulatory requirements now applicable to the transactions entered into by these applicants should reduce the expenses these applicants must incur to process these transactions. A secondary purpose of the proposed action is to bring the definition of "significant transaction" in line with the applicable statutory standard.

We invite public comments on the issue of the economic impact of our proposal on small entities.

List of Subjects in 49 CFR Part 1180

Railroads.

Decided: July 21, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett. Vice Chairman McDonald and Commissioner Simmons commented with separate expressions.

Sidney L. Strickland, Jr.

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1180 of the Code of Federal Regulations is proposed to be revised as follows:

PART 1180—RAILROAD ACQUISITION, CONTROL, MERGER, CONSOLIDATION PROJECT, TRACKAGE RIGHTS, AND LEASE PROCEDURES

1. The authority citation for part 1180 is proposed to be revised to read as follows:

Authority: 49 U.S.C. 10321, 10505, 11341, and 11343-11346; 5 U.S.C. 553 and 559; and 11 U.S.C. 1172.

2. Section 1180.0 is proposed to be amended by removing the 7th and 8th sentences and by adding in lieu thereof three new sentences to read as follows:

§ 1180.0 Scope and purpose.

* * * A *major* application must contain the information required in §§ 1180.6(a), 1180.6(b), 1180.7, 1180.8(a), and 1180.9. A *significant* application must contain the information required in §§ 1180.6(a), 1180.6(c), 1180.7, and 1180.8(a). A *minor* application must contain the information required in §§ 1180.6(a) and 1180.8(b). * * *

3. In § 1180.2, paragraph (b) is proposed to be revised to read as follows:

§ 1180.2 Types of transactions.

(b) A *significant* transaction is a transaction not involving the control or merger of two or more class I railroads that is of regional or national transportation significance as that phrase is used in 49 U.S.C. 11345(a)(2) and (c). A transaction not involving the control or merger of two or more class I railroads is not significant if a determination can be made either:

- (1) That the transaction clearly will not have any anticompetitive effects; or
- (2) That any anticompetitive effects of the transaction will clearly be outweighed by the transaction's anticipated contribution to the public interest in meeting significant transportation needs.

A transaction not involving the control or merger of two or more class I

railroads is significant if neither such determination can clearly be made.

4. In § 1180.4, paragraph (b)(1)(iv) is proposed to be revised to read as follows:

§ 1180.4 Procedures.

(b) * * *

(1) * * *

(iv) Indicate why the transaction is *major* or *significant*.

5. In § 1180.6, the introductory text of paragraph (b) is proposed to be revised, and a new paragraph (c) is proposed to be added, to read as follows:

§ 1180.6 Supporting information.

(b) In a *major* transaction, submit the following information:

(c) In a *significant* transaction, submit the information specified in paragraphs (b)(3), (b)(5), (b)(6), (b)(7), and (b)(8) of this section.

6. In § 1180.9, the introductory text is proposed to be revised to read as follows:

§ 1180.9 Financial information.

The following information shall be provided for *major* transactions, and for carriers shall conform to the Commission's Uniform System of Accounts, 49 CFR part 1201:

[FR Doc. 92-18941 Filed 8-7-92; 8:45 am]

BILLING CODE 7035-01-M

Notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Agriculture Biotechnology Research Advisory Committee; Working Group on Risk Assessment

In accordance with the Federal Advisory Committee Act of October 1972 (Pub. L. 92-463, 86 Stat. 770-776), the U.S. Department of Agriculture (USDA), Science and Education, announces the following meeting of a working group of the Agricultural Biotechnology Research Advisory Committee (ABRAC):

The Working Group on Risk Assessment will meet in the Georgetown Room, Rosslyn Westpark Hotel, 1900 N. Fort Myer Drive, Arlington Virginia, 22209 on August 25, 1992 from 9 a.m. to approximately 5 p.m. The Working Group will consider risk assessment issues in connection with field trials involving genetically engineered plants. Other risk assessment issues (e.g., experimental use of exotic pest and disease agents as challenge organisms in the development of pest and disease resistant plants) will also be discussed.

The meeting is open to the public. Persons may participate in the meeting as time and space permit.

Further information may be obtained from Ms. Maryln Cordle, Senior Regulatory Specialist, Office of Agricultural Biotechnology, room 1001, Rosslyn Plaza East, 14th Street and Independence Avenue SW., Washington, DC, 20250. Telephone (703) 235-1510.

Done at Washington, DC, this 4th day of August, 1992.

Duane Acker,

Assistant Secretary, Science and Education.

[FR Doc. 92-18845 Filed 8-7-92; 8:45 am]

BILLING CODE 3410-22-M

Food and Nutrition Service

National Advisory Council on Commodity Distribution; Meeting Announcement

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: A meeting of the National Advisory Council on Commodity Distribution is scheduled for August 18-19, 1992. The council, established by the Commodity Distribution Reform Act and WIC Amendments of 1987 (Pub. L. 100-237) meets biannually to advise the Secretary of Agriculture regarding the development of commodity specifications and other program improvements.

DATES: The meeting will take place on August 18-19, 1992, from 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Stouffer Concourse Hotel, 2399 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Ms. Beverly King, Deputy Director, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, Alexandria, Virginia 22302, (703) 305-2680.

SUPPLEMENTARY INFORMATION: This is the seventh meeting of the National Advisory Council and Commodity Distribution, as established by section 3(a)(3) of Public Law 100-237. The purpose of the council is to provide guidance to the Secretary of Agriculture on regulations and policy development for the Food Distribution Programs with primary emphasis on specifications for commodities. If time permits, the general public will be allowed to participate in the discussions. The agenda will be available 15 days prior to the meeting. Requests for the agenda should be sent to Ms. Alberta C. Frost, Executive Secretary, National Advisory Council on Commodity Distribution, USA, Food and Nutrition Service, 3101 Park Center Drive, room 502, Alexandria, Virginia 22302. Comments may be filed with Alberta C. Frost before or after the meeting.

Federal Register

Vol. 57, No. 154

Monday, August 10, 1992

Dated: August 4, 1992.

Betty Jo Nelsen,

Administrator.

[FR Doc. 92-18893 Filed 8-7-92; 8:45 am]

BILLING CODE 3410-30-M

Soil Conservation Service

Long Creek Watershed, Mississippi

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (7 CFR part 650); U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for Long Creek Watershed, Panola County, Mississippi.

FOR FURTHER INFORMATION CONTACT: L. Pete Heard, State Conservationist, Soil Conservation Service, suite 1321, A.H. McCoy Federal Building, 100 West Capitol Street, Jackson, Mississippi 39269, telephone (601) 965-5205.

SUPPLEMENTARY INFORMATION: An environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, L. Pete Heard, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project. The Project Plan provides land treatment measures to cropland throughout the watershed. The planned works of improvement consists of land treatment, 3 floodwater retarding structures, 19 intermediate size dams, 47 debris basin dams, rehabilitation of 19 existing dams, 70 minor (pipe) grade control structures, 4 major channel grade control structures, 5.4 miles of stream channel bank stabilization, and strengthen and/or repair of 11 bridges.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address.

The Watershed Plan/Environmental Assessment is on file and may be reviewed by contacting L. Pete Heard at the location shown herein.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the *Federal Register*.

Dated: July 23, 1992.

L. Pete Heard,

State Conservationist, SCS, Jackson, Mississippi.

[FR Doc. 92-18931 Filed 8-7-92; 8:45 am]

BILLING CODE 3410-10-M

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket No. 920895-2195]

Request for Comments on the Proposed Options for Incorporating Information From the Post-Enumeration Survey Into the Intercensal Population Estimates Produced by the Bureau of the Census

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice and request for comments and scheduling of public hearing.

SUMMARY: The purpose of this notice is to inform the public about the alternatives available to the Director of the Census Bureau for potential improvement in the intercensal estimates of population and to seek comment on the alternatives.

This notice also announces the scheduling of a public hearing on this matter.

DATES: The public hearing will be held on August 31, 1992 from 9 a.m. to 4 p.m. Written comments from the public should be received no later than August 31, 1992.

ADDRESSES: The hearing will be held in room 2412, Federal Office Building #3, U.S. Census Bureau, Suitland, Maryland from 9 a.m. to 4 p.m.

For those who wish to submit written comments, comments should be addressed to: Dr. Barbara Everitt Bryant, Director, Bureau of the Census, Washington, DC 20233-0100.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Bounpane, Assistant Director, Bureau of the Census, Telephone (301) 763-5613.

SUPPLEMENTARY INFORMATION

Background

During its long history, the Census Bureau has continuously sought to improve the statistics it collects and

disseminates. As part of this effort, the Census Bureau has improved its population counts in the decennial census each decade leading up to the 1990 census, which current estimates indicate achieved 98.4 percent accuracy. Despite this improvement, certain population sub-groups continue to be undercounted at a higher rate than the national population. This phenomenon is referred to as "differential undercount."

The Census Bureau measured the coverage of the 1990 census by a program called the Post-Enumeration Survey (PES) and considered whether incorporating the results of the PES into the census counts would make the counts more accurate. In July 1991, Secretary of Commerce Robert Mosbacher concluded that there was not sufficient evidence to support using the PES results to adjust the 1990 census. (For a fuller description of the decision whether to adjust the 1990 census, see 56 FR 33582-92.)

While Secretary Mosbacher concluded that an adjustment of the 1990 census would not make the counts more accurate at all levels for which decennial census data are used, he remained concerned about the differential undercount. He therefore instructed the Census Bureau to determine whether information gleaned from the PES could be used to improve the intercensal estimates produced in years between decennial censuses.

Since that time, the Census Bureau has conducted extensive research to refine the PES. That research has shown that the estimates of undercount reported in July 1991 were too high. (See the section below—Results of Post-Census Research.) That research has also shown that even with the additional year of research and removing one of the causes of concern in July 1991 (the smoothing operation), some of the problems of the PES as a tool for adjustment cannot be resolved. For example, the level of bias in the national level of undercount is as large now as it was in July 1991 even though the level of the national undercount has been reduced by 0.5 percent. While research on the issues surrounding the PES continues, because the schedule for release of the intercensal estimates, the Census Bureau now must decide whether to include the results of the PES into the base used to calculate intercensal estimates.

The decision on whether to incorporate results from the PES into the intercensal estimates is separate and distinct from the decision whether to adjust 1990 census. One reason for that distinction is the functional differences

between the census and intercensal estimates. Unlike the census, the intercensal estimates are not used for apportionment and redistricting. A principal purpose of a census is to produce statistics for each and every jurisdiction. The census is the only source for sub-jurisdiction data, (tracts, blocks, etc.), whereas intercensal estimates are used at various geographic levels. Many important uses of intercensal estimates are at the national and state levels. There are also major differences in the methods used to collect the census and those to make intercensal estimates. The census is a large scale actual enumeration. Intercensal estimates have an additional component of population change over time which is estimated by procedures that require numerous professional judgments. Therefore, intercensal estimates are also subject to error in trying to estimate population change over time while the census error is restricted to whatever error occurs in the actual enumeration.

If there is a decision to incorporate results from the PES into intercensal estimates, there is no intention to adjust the full 1990 decennial census because there is no statistical justification to do so. Based on its revised analysis, the Census Bureau could not conclude that incorporating results from the PES would improve intercensal estimates at the sub-state level. Thus, the relative distribution of population counts from the 1990 census can be considered generally more accurate at sub-state levels.

Calculation of Intercensal Estimates

In the years between each decennial census, the Census Bureau updates its population counts with estimates of change based on demographic data. These are called intercensal estimates or post-censal estimates. Intercensal estimates are made by updating the census base with estimates of population changes due to births, deaths and net migration. These estimates are calculated and reported at the national, state and county level every year and at the incorporated place (city, village, etc.) level every other year.

At the national level, intercensal estimates are produced by age and sex for major race groups and for persons of Hispanic origin. At the state level, they are produced by age and sex. For counties and cities, the Census Bureau only produces total population estimates. There also exists an experimental program that produces estimates by age, sex, race and Hispanic origin at the state and sub-state levels.

If the results of the 1990 PES are included in calculating the 1992 intercensal estimates, the base population would be changed not only to reflect the demographic changes since the 1990 decennial census, but also to reflect the number of persons estimated to have been undercounted or overcounted in the 1990 census. The inclusion of the net undercount figures would constitute a one-time addition which would remain constant throughout the decade. Thus, unlike changes due to demographic data, additions based on incorporating the results of the PES would not reflect any aging, death, or relocation of the additional persons during the decade.

Uses of Intercensal Estimates

The intercensal estimates have three major uses. They are used to calibrate many of the sample surveys conducted throughout the decade. Since sample surveys generally have poorer coverage than a census, estimates from sample surveys are often controlled to an independent total, such as intercensal estimates. Second, intercensal estimates are also used as the denominator for many important per capita statistics throughout the decade. (For example, number of crimes per 1,000 people, incidence of health conditions per 1,000 people, etc.) Third, the estimates are used in Federal and state funding allocations.

About one-third of Federal funding dollars are based on the use of intercensal estimates of population as part of their funding formula, rather than using the census count for ten years. The General Accounting Office (GAO) has estimated that about 10 billion Federal dollars a year are allocated based on funding formulas that use intercensal estimates. (See Federal Formula Programs—Outdated Population Data Used To Allocate Most Funds [GAO/HRD-90-145, September, 1990]). The GAO has also reported that a small percentage of that total would be reallocated among states if the PES results were incorporated into the census counts. (See Formula Programs—Adjusted Census Data Would Redistribute Small Percentage of Funds to States [GAO/GGD-92-12, November, 1991]). The latter GAO report also indicates that an increase in population in a given area through the incorporation of PES data would not necessarily result in an increase in federal funding in that area. Census Bureau research confirms these findings.

Results of Post-Census Research

During its analysis of the PES, the

Census Bureau discovered a significant computer processing error in the system used to determine the undercount estimates. As a result of this error, the estimated national undercount rate of 2.1 percent was overstated by 0.4 percent. After correction of the error, the national level undercount was estimated to be about 1.7 percent. After making other refinements and corrections, the Bureau of the Census now estimates the national undercount to be about 1.6 percent.

In recent weeks, a committee of Census Bureau statisticians, in consultation with other statistical experts, reviewed the revised estimates of undercount in the 1990 census to determine if these estimates could be used to improve the accuracy of the intercensal estimates. This committee reported that, on average, use of the PES results would lead to improvement in accuracy for intercensal estimates at the national and state levels only. There were exceptions to this general finding for some states. (Assessment of Accuracy of Adjusted Versus Unadjusted 1990 Census Base for Use in Intercensal Estimates: Report of the Committee on Adjustment of Postcensal Estimates). Below the state level, the committee reported that using the 1990 census counts as the base would lead to more accurate intercensal estimates than counts which incorporate the PES results. However, if the state estimates included the PES results but sub-state estimates did not, the sub-state estimates would not add up to the state level estimates. A system of intercensal estimates that is not additive is generally regarded as undesirable by users of intercensal estimates, particularly where funding formulas are tiered.

The Decision on Intercensal Estimates

The Director of the Census Bureau will make the decision whether to adjust the base for intercensal estimates and, if so, by what method. The decision must be made by early September 1992 in order to implement the procedure in time for release of the 1992 state estimates before the end of calendar year 1992.

Five options have been identified by the Census Bureau for consideration by the Director. None of these options is optimal for all uses of intercensal estimates. There is no option available to the Director which is fully consistent with the statistical findings of the Census Bureau, evenly balances the needs of diverse users of the intercensal estimates, and produces equivalent accuracy at various levels of geography.

Therefore, the director must weigh the relative merits and disadvantages of these options and exercise informed judgment in her final decision. The options available to the Director are described below.

Options

Option #1 Incorporate the results of the PES into the base for intercensal estimates at all levels of geography.

Based on Census Bureau findings, this option would result in intercensal estimates that are generally more accurate at the national and state levels, but generally less accurate at sub-state levels than counts without the PES results. This option would produce a set of additive estimates.

Option #2 Incorporate the PES results into the intercensal base at the national and state levels. At the sub-state level, use a simple synthetic estimate based on the percentage of state-level estimated undercount. (Example: If a state has an estimated undercount of 1% as measured by the PES, then the base for every sub-state area is increased by 1% regardless of the actual PES estimate of undercount for each area.)

Based on Census Bureau findings, this option results in intercensal estimates that are generally more accurate at the state and national levels, while accuracy at sub-state levels may be improved or diminished depending upon the relationship between the measured undercount at the state and sub-state levels. The Census Bureau does not have a detailed evaluation of the technical merits of population counts for this option at the sub-state levels. However, for the proportional distribution of sub-state areas within a state, under this option, a city's population as a percentage of the total state population would be the same using either the census counts or the synthetic counts. This option would produce a set of additive estimates.

Option #3 Incorporate the results of the PES into the intercensal base for national and state level estimates, but not for sub-state levels (counties, cities, etc.).

Based on Census Bureau findings, this option would result in intercensal estimates that are generally more accurate at the national and state levels, and retain the relative accuracy of the 1990 census counts at sub-state levels. As a result of the inclusion of the PES results at the state level and exclusion at sub-state levels, this option would produce a series of estimates that are not additive from sub-state to state.

Option #4 The base for intercensal estimates for all levels of geography would be a simple average of the 1990 census count and an estimate incorporating the results of the PES.

Under this option, the Census Bureau would attempt to achieve some improvements in the accuracy of intercensal estimates by including PES results averaged with the 1990 census counts. While this option would produce intercensal estimates less accurate than options #1, 2, and 3 at the national level and for some states, it would produce sub-state level estimates that are potentially more accurate. Within the Census Bureau, there has been prior use of composite data developed by averaging two different estimates. Because the Census Bureau has not completed a thorough investigation into the technical merits of averaging in this case, this option is based on limited technical findings. This option would produce a set of additive estimates.

Option #5 Do not incorporate the PES results into the intercensal estimates for any jurisdiction.

This option would not address the potential to improve generally the state and national level estimates based on the PES. It would retain the relative accuracy of the 1990 decennial census counts, which the Census Bureau determines cannot be improved upon, at the sub-state level. This option would produce a set of additive estimates.

Request for Comments/Public Hearings

The Census Bureau invites the public to participate in the public hearing on August 31, 1992 to discuss these issues, or to submit written comments by August 31, 1992. The purpose of the hearing is to give the Census Bureau the opportunity to hear the comments of interested parties and not to debate the alternatives available to the Director. Both written and oral comments (as transcribed) will be made part of the public record, and will be available for inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, Herbert C. Hoover building, 14th & Constitution Avenue, NW, Washington, DC 20230.

For a copy of the Report of the Committee on Adjustment of Postcensal Estimates call (301) 763-5613.

Dated: August 5, 1992.

Barbara Everitt Bryant,

Director, Bureau of the Census.

[FR Doc. 92-18943 Filed 8-5-92; 3:06 pm]

BILLING CODE 3510-07-M

Bureau of Export Administration

Action Affecting Export Privileges; Yuzo Oshima and The Sound You Company, Ltd.; Order Renewing Temporary Denial of Export Privileges

In the Matter of: Yuzo Oshima and The Sound You Co. Ltd., both with an address at: Tatsuno-Nishitenma Building 3-1-6, Nishitenma Kita-ku, Osaka, Japan, Respondents.

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (Department), pursuant to the provisions of the Export Administration Regulations (currently codified at 15 CFR parts 768-799 (1991)) (the Regulations), issued pursuant to the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C. app. 2401-2420 (1991)) (Act),¹ has asked the Assistant Secretary for Export Enforcement to renew an order temporarily denying all United States export privileges to Yuzo Oshima (Oshima) and The Sound You Company, Ltd. (Sound You). The initial temporary denial order (TDO) was issued on February 11, 1991 for 180 days (56 FR 10099, February 11, 1991) and again, for 180 days, on February 4, 1992 (57 FR 5126, February 12, 1992). Without renewal, the TDO is scheduled to expire on August 2, 1992.

In its renewal request of July 13, 1992, the Department asserts, as it did in its initial request for a TDO, that, as a result of its investigation, the Department has reason to believe that, during the period from February 20, 1990 to February 5, 1991, Oshima and Sound You tried to obtain microprocessors manufactured by the Intel Corporation, controlled for reasons of national security at all relevant times, so that they could export that equipment from the United States to North Korea, a country against which the United States has a virtually complete embargo, without first obtaining the required validated license.

In its renewal request of July 13, 1992, the Department also stated that nothing the Department had learned since the time of that initial request has given it reason to believe that its initial suspicions were inaccurate. Indeed, the Department noted that, on February 6, 1991, it separately charged Oshima and Sound You with violating the Regulations based on the same set of facts as those that originally formed the

basis for the original and subsequent TDOs. The Department further noted that, although no final decision had yet been issued in connection with the charges against Oshima and Sound You, it continues to believe that the violations Oshima and Sound You are suspected of having committed were deliberate and covert and are likely to occur again unless the TDO naming Oshima and Sound You as denied parties is renewed. In addition, the Department believes that, pending final resolution of the administrative actions the Department has initiated against Oshima and Sound You, renewal of the TDO is necessary to give notice to companies in the United States and abroad that they should cease dealing with Oshima and Sound You in transactions involving U.S.-origin goods.

No opposition was filed in response to the Department's request for renewal. Therefore, based on the showing made by the Department, I find that an order temporarily denying the export privileges of Yuzo Oshima and The Sound You Company Ltd. is necessary in the public interest to prevent an imminent violation of the Act and the Regulations and to give notice to companies in the United States and abroad to cease dealing with Yuzo Oshima and the Sound You Company, Ltd. in goods and technical data subject to the Act and the Regulations, in order to reduce the substantial likelihood that Yuzo Oshima and The Sound You Company, Ltd. will continue to engage in activities that are in violation of the Act and the Regulations.

Accordingly, it is hereby ordered:

I. All outstanding individual validated licenses in which Oshima or Sound You appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Oshima's and Sound You's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

II. For a period of 180 days from the effective date of this order, Yuzo Oshima and The Sound You Company Ltd., both with an address at Tatsuno-Nishitenma Building, 3-1-6, Nishitenma, Kita-ku, Osaka, Japan, and all successors, assignees, officers, partners, representatives, agents, and employees, hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving any commodity or

¹ The Act expired on September 30, 1990. Executive Order 12730 (55 FR 40373, October 2, 1990) continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701-1706 (1991)).

technical data exported or to be exported from the United States, in whole or in part, or that is otherwise subject to the Act and the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodity or technical data exported or to be exported from the United States, and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data.

III. After notice and opportunity for comment as provided in § 788.3(c), any person, firm, corporation, or business organization related to Oshima or Sound You by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. As provided in § 787.12(a) of the Regulations, without prior disclosure of the facts to and specific authorization of the Office of Export Licensing, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity: (i) Apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the Bureau of Export Administration; or (ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate: (a) In any transaction which may involve any commodity or technical data exported or to be exported from the United States; (b) in any reexport thereof; or (c) in any other transaction which is subject to the Regulations, if the person denied export privileges may obtain any benefit or have any interest in, directly or indirectly, any of these transactions.

V. In accordance with the provisions of § 788.19(e) of the Regulations, either

respondent may, at any time, appeal this temporary denial order by filing with the Office of the Administrative Law Judge, U.S. Department of Commerce, room H-6716, 14th Street and Constitution Avenue, NW., Washington, DC 20230, a full written statement in support of the appeal.

VI. This order is effective on August 2, 1992 and shall remain in effect for 180 days from that date.

VII. In accordance with the provisions of Section 788.19(d) of the Regulations, the Department may seek renewal of this temporary denial order by filing a written request not later than 20 day before the expiration date. Either respondent may oppose a request to renew this temporary denial order by filing a written submission with the Assistant Secretary for Export Enforcement, which must be received not later than seven days before the expiration date of this order.

A copy of this order shall be served on each respondent and this order shall be published in the *Federal Register*.

Dated: July 31, 1992.

Douglas E. Lavin,

Acting Assistant Secretary for Export Enforcement.

[FR Doc. 92-18832 Filed 8-7-92; 8:45 am]

BILLING CODE 3510-DT-M

Office of the General Counsel

[Docket Number 920653-2153]

Commercial Law Development Program for Central and Eastern Europe ("CLDP")

AGENCY: Office of the General Counsel, Commerce.

ACTION: Notice of the availability of funds for the CLDP Legal Internship Program.

SUMMARY: The Department of Commerce ("Department") Office of the General Counsel established the Commercial Law Development Program for Central and Eastern Europe ("CLDP") in January 1992 as part of the Administration's ongoing efforts to assist Central and Eastern Europe, and the Baltic States, in the development of a commercial infrastructure consistent with free market principles. The CLDP will support the political and economic reforms being undertaken in the countries of the region by providing technical assistance in the evaluation and revision of their commercial legal systems, with a focus on investment law, commercial dispute resolution, real and intellectual property rights, and government procurement. The legal

internship component of the CLDP will provide an opportunity for law students and practicing attorneys, with no more than five years of legal experience, from the region to serve as interns in U.S. law firms and legal offices of U.S. companies, accounting firms, and trade associations for a period of six weeks to four months in order to learn U.S. legal structures and procedures. Only English speaking attorneys with no more than five years of legal experience and law students proficient in English and in their last year of law school or enrolled in a graduate legal program are eligible for the internship program. To ensure that the program's goals will be met, each applicant will be required to submit a plan for utilizing the U.S. experience to support commercial law reform in his or her country. The goal of the program is to provide these law students and recent law school graduates with the expertise necessary to participate in the establishment and implementation of free market legal frameworks in their countries. In addition, host firms will benefit from the program by learning more about these countries and their legal and commercial climates.

Under the CLDP legal internship program, qualified U.S. law firms and the general counsel offices of companies, accounting firms, and trade associations will be eligible under specified circumstances to receive funds through cooperative agreements with the Department to help defray the cost of hosting an intern in the U.S. Participating U.S. firms will be expected to provide the legal interns with instruction in any of the following areas of commercial law: Commercial or financial transactions, corporate law, foreign investment law, commercial dispute resolution, real property and intellectual property or government procurement policies and procedures.

The CLDP will endeavor to place law students and recent law school graduates from each of the countries in the region. CLDP also may place interns with the Eastern European legal offices of U.S. firms. U.S. firms with Eastern European legal offices interested in providing legal internships to law students and recent law school graduates from the region are invited to participate in CLDP's "matchmaker" service. CLDP will interview candidates and recommend eligible interns for in-country placement. However, no Department funding is available for such placements, and such host firms will be responsible for all costs, including travel expenses, related to sponsoring the intern. In addition, U.S. firms operating

in the U.S. who wish to utilize the CLDP's "matchmaker" service without applying for financial assistance may do so. Such firms will be responsible for all costs, including travel expenses, related to sponsoring the intern.

DATES: Applications should be submitted no later than 3 p.m., on September 9, 1992.

ADDRESSES: Applications should be sent, along with two self-addressed mailing labels, to Susan Gurley, Deputy Director, Commercial Law Development Program, Office of the General Counsel, room 3845, U.S. Department of Commerce, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Susan Gurley, Deputy Director, Commercial Law Development Program, Office of the General Counsel, room 3845, U.S. Department of Commerce, Tel: (202) 377-5382, Fax: (202) 377-3244.

SUPPLEMENTARY INFORMATION: In addition to the program description contained in the summary, the following information also applies:

I. Funding Availability

Pursuant to section 632(a) of the Foreign Assistance Act of 1961, as amended, (the "Act"), funding for the program will be provided by the Agency for International Development (AID). The Department will award financial assistance and administer the program pursuant to the authority contained in section 632(b) of the Act. The maximum amount of the financial assistance available for the legal internship portion of the CLDP program is \$60,000.

II. Funding Instrument and Project Duration

Federal assistance will be awarded pursuant to a cooperative agreement between the Department and the recipient U.S. firm or company located in the U.S. With funds provided by AID, the Department will reimburse companies for the roundtrip coach airfare of each intern between the intern's home country and the U.S. internship site upon submission to the Department of the travel invoice (Fly America Act provisions apply). The Department will reimburse companies a stipend of \$30 per intern per day in the U.S. for up to four months. Disbursement of funds for reimbursement of the stipend will be made upon certification by the companies that the internship program has been completed and the intern has returned to his or her country. Each award will have a cap of \$6,000 for total cost of airline and stipend per intern. There are no specific matching requirements for the awards. Companies are expected to bear the costs beyond

those covered by the award, including payment for housing and medical insurance, as well as for any food and incidental costs beyond \$30 per day. Companies also are responsible for sponsoring the intern for the appropriate U.S. visas. Awards will be provided for this program on a rolling basis. All awards are expected to be made prior to March 1993. Individual internships are expected to run from six weeks to four months.

U.S. firms wishing to utilize CLDP assistance in identifying prospective interns for placement with their U.S. or Eastern European offices and requiring no financial support from the Department may do so without competing for the grant program described below. Such firms will be responsible for all costs, including travel expenses, related to sponsoring the intern.

III. Request for Applications

To obtain a Competitive Application Kit, please send a written request with two self-addressed mailing labels to Susan Gurley, Deputy Director, Commercial Law Development Program, room 3845, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Only one copy of the Application Kit will be provided to each organization requesting it, but it may be reproduced by the requester. A signed original and two copies of the application (Standard Form 424 (Rev. 4-88)) and supplemental materials must be submitted to CLDP at the address designated in the Application Kit in order for the application to be considered. Awards are expected to be made on a rolling basis prior to March 1993.

IV. Eligibility

Applicants for the CLDP internship program may be any for-profit or non-profit U.S. law firm, corporation, accounting firm, or trade association, or organization or other public or private entity. Each application will receive an objective review by a three-member review panel. Applications will be evaluated on a competitive basis, as they are received in accordance with the selection criteria set forth below. The Department reserves their right to reject any application, to limit the number of items per applicant, and to consider other non-competitive procedures to distribute assistance under this program as appropriate and in accordance with law.

A. Selection Criteria

Consideration for financial assistance will be given to CLDP proposals which:

1. Demonstrate a commitment to the intent and goals of the program to provide appropriate instruction in the areas of commercial law, including commercial or financial transactions, corporations law, contract law, foreign investment law, commercial dispute resolution, real property or intellectual property, and government procurement practices and procedures by presenting a realistic workplan detailing the instruction to be provided to the CLDP intern, with emphasis on how the instruction will assist the law student and/or practicing attorney in utilizing the training received to lead in his or her country's establishment and implementation of a free market system;

2. Are proposed by applicants with the financial capacity to successfully undertake the intended activities of hosting an intern (including the provision of providing housing and medical insurance); and

3. Improve the U.S. geographic diversity of placements.

Selection criteria 1 and 2 will be weighted equally. In addition, those Applicants that meet selection criteria 3 will receive preferential consideration.

If funds remain available after the award of financial assistance to qualified firms pursuant to this notice the Department may later announce the offer of the remaining funds through further notices in the Federal Register.

B. Conditions

All Applicants are advised of the following:

1. No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

- A. The delinquent account is paid in full;

- B. A negotiated repayment schedule is established and at least one payment is received; or

- C. Other arrangements satisfactory to the Department are made. 1. Applicants need to be aware that prior unsatisfactory performance on another award may be grounds for ineligibility. 3. All primary applicants must submit a completed Form CD-511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying," and applicants are advised that:

- A. *Nonprocurement Debarment and Suspension.* Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form;

B. Drug Free Workplace. Grantees (as defined at 15 CFR part 26, Section 605), are subject to 15 CFR part 26, subpart F, "Government Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form;

C. Anti-Lobbying. Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriate funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form which applies to applications/bids for grants, cooperative agreements, and contracts for more than \$100,000, and loans and loan guarantees for more than \$150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

D. Anti-Lobbying Disclosures. Any applicant that has paid or will pay for lobbying using any funds must submit an SF-LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

4. False statements on the application may be grounds for denial or termination of funding, as well as potential civil and criminal liability.

5. Awards under this program shall be subject to Federal and Department regulations, policies, and procedures, applicable to financial assistance awards.

6. The Standard Form 424 (Rev. 4-88) mentioned in this notice is subject to the Paperwork Reduction Act and has been approved by OMB under Control No. 0348-0006.

7. The Grant Officer is the only individual who may legally commit the Government to the expenditure of public funds. No costs chargeable to the proposed grant may be incurred before receipt of either a fully executed grant or a specific written authorization from the Grants officer.

8. If an application is selected for funding, the Department of Commerce has no obligation to provide any additional future funding in connection with the award. Renewal of an award to increase funding or extend the period of performance is at the discretion of the Department of Commerce.

9. Executive Order 12372 Intergovernmental Review of Federal Programs does not apply to this program.

Dated: August 4, 1992.

Lynn S. West,

Deputy General Counsel.

[FR Doc. 92-18925 Filed 8-7-92; 8:45 am]

BILLING CODE 3510-BW-M

National Oceanic and Atmospheric Administration

Marine Mammals; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Request for Modification of Permit No. 738 (P77#51).

Notice is hereby given that the Southeast Fisheries Science Center, National Marine Fisheries Service, 75 Virginia Beach Drive, Miami, Florida 33149, request a modification to Permit No. 738, issued on May 16, 1991 (56 FR 14087), under the authority of the Marine Mammal Protection Act of 1972 (16 USC 1361-1407) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Permit No. 738 currently authorizes the collection of biopsy samples from several species of small, non-endangered cetaceans, and the biopsy sampling, photo-ID and low-level monitoring of bottlenose dolphins (*Tursiops truncatus*) throughout the NMFS Southeast Region.

The applicant now requests authorization to add aerial surveys and an increased number of takes of those species previously authorized, in order to include all cetaceans which may be sighted during the course of conducting aerial surveys over the remaining two and a half-year period.

It is also requested that the following additional species may be taken by harassment during approach of vessels or during the course of aerial surveys to be conducted at altitudes of 750 feet or above, except when greater resolution is required for positive identification, at which time the animals may be approached at altitudes of 300-500 feet (this lower altitude is not requested for *Physeter macrocephalus* or for baleen whales):

Up to 2500 right whale (*Eubalaena glacialis*); 250 blue whale (*Balaenoptera musculus*); 2500 fin whale (*B. physalus*); 1250 Sei whale (*B. borealis*); 2500 Bryde's whale (*B. edeni*); 2500 minke whale (*B. acutorostrata*); 2500 humpback whale (*Megaptera novaeangliae*); 2500 sperm whale (*Physeter macrocephalus*); 2500 beaked whale, including Cuvier's beaked whale (*Ziphius cavirostris*); Blainville's beaked whale (*Mesoplodon densirostris*); Sowerby's beaked whale (*M. bidens*); and Gervais' beaked whale (*M. europaeus*).

Concurrent with the publication of this notice in the Federal Register, the Secretary of Commerce is forwarding copies of this application to the Marine

Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this modification request should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Hwy., room 7324, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this modification request are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above modification request are available for review by interested persons in the following offices by appointment:

Permit Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., suite 7324, Silver Spring, MD 20901 (301/713-2289); and

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Blvd., St. Petersburg, FL 33702 (813/893-3141).

Dated: July 31, 1992.

Charles Karnella,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 92-18834 Filed 8-7-92; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comments on Bilateral Textile Consultations with the Government of Pakistan on Duck Fabric

August 5, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: August 12, 1992.

FOR FURTHER INFORMATION CONTACT:

Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the

quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-6714. For information on embargoes and quota re-openings, call (202) 377-3715. For information on categories on which consultations have been requested, call (202) 377-3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On July 27, 1992, under the terms of the Bilateral Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement, effected by exchange of notes dated May 20, 1987 and June 11, 1987, as amended and extended, between the Governments of the United States and Pakistan, the United States Government requested consultations with the Government of Pakistan with respect to duck fabric in Category 219 at a level of 1,246,467 square meters.

The purpose of this notice is to advise the public that, pending agreement on a mutually satisfactory solution concerning Category 219, the Government of the United States has decided to control imports during the ninety-day period which began on July 27, 1992 and extends through October 24, 1992.

If no solution is agreed upon in consultations between the two governments, CITA, pursuant to the agreement, may later establish a specific limit for the entry and withdrawal from warehouse for consumption of duck fabric in Category 219, produced or manufactured in Pakistan and exported during the prorated period beginning on October 25, 1992 and extending through December 31, 1993, of not less than 794,003 square meters.

A summary market statement concerning Category 219 follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Category 219, under the agreement with the Government of Pakistan, or to comment on domestic production or availability of products included in Category 219, is invited to submit 10 copies of such comments or information to Auggie D. Tantillo, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande. The comments received will be considered in the context of the consultations with the Government of Pakistan.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Category 219. Should such a solution be reached in consultations with the Government of Pakistan, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the **CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States** (see **Federal Register** notice 56 FR 60101, published on November 27, 1991).

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Market Statement—Pakistan

Category 219—Duck Fabric
July 1992

Import Situation and Conclusion

U.S. imports of duck fabric, Category 219, from Pakistan reached 3,786,042 square meters in the year ending May 1992, 25 percent above the 3,027,019 square meters imported a year earlier. In the first five months of 1992, duck fabric imports, Category 219, from Pakistan surged to 2,415,052 square meters, 58 percent above their January-May 1991 level and 83 percent of their total calendar year 1991 level. Pakistan became the fourth largest supplier of duck fabric to the U.S. market, accounting for 6 percent of Category 219 imports during the January-May 1992 period. In calendar year 1991, Pakistan was the sixth largest supplier of duck fabric to the U.S., accounting for 4 percent of total Category 219 imports.

The sharp and substantial increase in Category 219 imports from Pakistan is

causing a real risk of disruption in the U.S. market for duck fabric.

Import Penetration and Market Share

U.S. production of duck fabric dropped from 63,436,000 square meters in 1989 to 49,534,000 square meters in 1991, a 22 percent decline. In the year ending in March 1992, U.S. duck fabric production fell to 45,784,000 square meters, 12 percent below the comparable period in 1991. In contrast, U.S. imports of duck fabric, Category 219, increased from 70,962,000 square meters in 1989 to 80,275,000 square meters in 1991, a 13 percent increase. Category 219 imports surged in 1992, increasing by 33 percent in the first five months of 1992 over the January-May 1991 level.

The U.S. producers' share of the U.S. duck fabric market dropped 9 percentage points, falling from 47 percent in 1989 to 38 percent in 1991. The drop in the U.S. producers' market share continued in 1992, falling to 34 percent during the year ending March 1992. The ratio of imports to domestic production increased from 111 percent in 1989 to 162 percent in 1991, and reached 194 percent during the year ending March 1992.

Duty-Paid Value and U.S. Producers' Price

All of Category 219 imports from Pakistan during the year ending May 1992 entered the U.S. under HTSUSA numbers 5209.11.0090—85 percent or more by weight cotton, unbleached duck fabric of plain weave, weighing more than 200 grams per square meter and 5209.19.0060—85 percent or more by weight, unbleached cotton duck fabric other than plain weave, weighing more than 200 grams per square meter.

These fabrics entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable duck fabrics.

Committee for the Implementation of Textile Agreements

August 5, 1992.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1991; pursuant to the Bilateral Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement, effected by exchange of notes dated May 20, 1987 and June 11, 1987, as amended and extended, between the Governments of the United States and Pakistan; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on August 12, 1992, entry into the United States for consumption and

withdrawal from warehouse for consumption of duck fabric in Category 219, produced or manufactured in Pakistan and exported during the period beginning on July 27, 1992 and extending through October 24, 1992, in excess of 1,246,467 square meters.¹

Textile products in Category 219 which have been exported to the United States prior to July 27, 1992 shall not be subject to the limit established in this directive.

Textile products in Category 219 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,
Chairman, Committee for the Implementation
of Textile Agreements.

[FR Doc. 92-18878 Filed 8-7-92; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of the Meeting: August 25, 1992.

Time: 0830-1630 Hours.

Place: Arlington, Virginia.

Agenda: The Army Science Board's Logistics and Sustainability Issue Group will meet to discuss the work assignment involving a documentation review from the Strategic Logistics Agency to develop a plan to complete the assignment and to begin the actual work. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information (703)695-0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 92-18928 Filed 8-7-92; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Close Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. Law. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of the Meeting: 28-29 September 1992.

Time: 0900-1700 Daily.

Place: Pentagon, Washington, DC.

Agenda: The Army Science Board (ASB) Ad Hoc Subgroup reviewing the U.S. Army Material Command (AMC), Research, Development and Engineering Centers (RDEC), will analyze the collected data and information, develop and finalize recommendations and conclusions, and prepare an exit briefing for the Study Sponsor and draft a report for the Secretary of the Army. This meeting will be closed to the public in accordance with section 552b(c) of title 5, U.S.C., specifically subparagraph (2) and (9) thereof, and title 5, U.S.C., appendix 2, subsection 10(d). The matters to be discussed will relate solely to the internal personnel rules and practices of the Army, and would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action thereby precluding opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695-0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 92-18930 Filed 8-7-92; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Commission Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of the Meeting: 27 August 1992.

Time: 0900-1700 Daily.

Place: Pentagon, Washington DC.

Agenda: The Army Science Board (ASB) Ad Hoc Subgroup reviewing the U.S. Army Material Command (AMC) Research, Development and Engineering Centers (RDEC) will meet to finalize the structure and content of the review process, including the follow-up ASB visits to the RDECs. This meeting will be closed to the public in accordance with section 552b(c) of title 5, U.S.C., specifically subparagraphs (2) and (9) thereof, and title 5, U.S.C. appendix 2,

subsection 10(d). The matters to be discussed will relate solely to the internal personnel rules and practices of the Army, and would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action thereby precluding opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695-0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 92-18938 Filed 8-7-92; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of the Meeting: 27 August 1992.

Time: 0800-1630 Daily.

Place: Stratford, CT.

Agenda: The Army Science Board Ad Hoc Subgroup on the "Comanche International" will meet 27 August with the primary contractors for the Comanche helicopter, Sikorsky Helicopters and Boeing Helicopters, to brief their findings and recommendations published in the report for the Secretary of the Army. The report will address the mission of the group, potential cooperation for future helicopter programs and issues surrounding the development of the Comanche (RAH-66) and the Tiger helicopters. Classified and proprietary information will also be discussed. This meeting will be closed to the public in accordance with section 552(c) of title 5, U.S.C., specifically subparagraphs (1) and (4) thereof, and title 5, U.S.C., appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed is so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information (703) 695-0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 92-18939 Filed 08-7-92; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act

¹ The limit has not been adjusted to account for any imports exported after July 28, 1992.

(Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of the Meeting: 2-4 September 1992.

Time: 0900-1700 Daily.

Place: Pentagon, Washington DC.

Agenda: The Army Science Board (ASB) Ad Hoc Subgroup reviewing the U.S. Army Materiel Command (AMC), Research, Development and Engineering Centers (RDEC), Technical Directors will brief their "Business Plans" to the group. This meeting will be closed to the public in accordance with section 552b(c) of title 5, U.S.C., specifically subparagraph (2) and (9) thereof, and title 5, U.S.C., appendix 2, subsection 10(d). The matters to be discussed will relate solely to the internal personnel rules and practices of the Army, and would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action thereby precluding opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695-0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 92-18940 Filed 8-7-92; 8:45 am]

BILLING CODE 3710-06-M

Defense Logistics Agency

Privacy Act of 1974; Amend Record Systems

AGENCY: Defense Logistics Agency, DOD.

ACTION: Amend record systems.

SUMMARY: The Defense Logistics Agency proposes to amend four existing record systems to the DLA inventory of record system notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendments will be effective without further notice on September 9, 1992, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Administrative Management Branch, Planning and Resource Management Division, Defense Logistics Agency, Room 5A120, Cameron Station, Alexandria, VA 22304-6100.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 617-7583.

SUPPLEMENTARY INFORMATION: The complete inventory of Defense Logistics

Agency record system notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, were published in the Federal Register as follows:

50 FR 22897, May 29, 1985 (DOD Compilation, changes follow)
50 FR 51898, December 20, 1985
51 FR 27443, July 31, 1986
51 FR 30104, August 22, 1986
52 FR 35304, September 18, 1987
52 FR 37495, October 7, 1987
53 FR 4442, February 16, 1988
53 FR 9965, March 28, 1988
53 FR 21511, June 8, 1988
53 FR 26105, July 11, 1988
53 FR 32091, August 23, 1988
53 FR 39129, October 5, 1988
53 FR 44937, November 7, 1988
53 FR 48708, December 2, 1988
54 FR 11997, March 23, 1989
55 FR 21918, May 30, 1990 (Updated Mailing Addresses)
55 FR 32284, August 8, 1990
55 FR 32947, August 13, 1990
55 FR 34050, August 21, 1990
55 FR 42755, October 23, 1990
55 FR 53178, December 27, 1990
56 FR 5806, February 13, 1991
56 FR 8987, March 4, 1991
56 FR 11207, March 15, 1991
56 FR 19838, April 30, 1991
56 FR 31392, July 10, 1991 (Updated Index)
56 FR 35852, July 29, 1991
56 FR 52017, October 17, 1991
56 FR 55910, October 30, 1991
56 FR 56065, October 31, 1991
56 FR 65245, December 16, 1991
57 FR 2715, January 23, 1992
57 FR 13718, April 21, 1992
57 FR 20471, May 13, 1992
57 FR 28490, June 25, 1992
57 FR 29294, July 1, 1992

The amendments are not within the purview of subsection (r) of the Privacy Act which requires the submission of an altered system report. The specific changes to the record systems being amended are set forth below, followed by the system notices, as amended, in their entirety.

Dated: August 5, 1992.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

AMENDMENTS S153.10 DLA-T

SYSTEM NAME:

Personnel Security Files, (50 FR 22902, May 29, 1985).

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with "S500.10 DLA-T".

SYSTEM LOCATION:

Delete entry and replace with "Command Security Office,

Headquarters Defense Logistics Agency, Cameron Station, Alexandria, VA 22304-6100 and Command Security Offices, Defense Logistics Agency (DLA), Primary Level Field Activities (PLFAs). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

In the first sentence, delete "(NAC)" and replace with "with Written Inquiries (NACI)".

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Evidence of security eligibility determinations and security clearances granted to individuals. Certifications of security briefings and debriefings signed by individuals. Reports of investigations conducted by the Office of Personnel Management, the Defense Investigative Service, the investigative units of the Army, Navy and Air Force, and other Federal investigative organizations containing unfavorable information requiring a security eligibility determination by the DLA Central Adjudication Board."

PURPOSE(S):

Delete entry and replace with "The records and reports are used by the HQ DLA Central Adjudication Board, Command Security Officers and other designated officials as a basis for determining a person's eligibility to occupy a sensitive position, perform sensitive duties, or for access to classified information."

RETRIEVABILITY:

In the first sentence, delete "Reports" and replace with "Records."

RETENTION AND DISPOSAL:

Delete entry and replace with "Records of security eligibility determinations, evidence of security clearances and related documents are retained as long as the person is employed or assigned to DLA. After the person leaves DLA, the reports are placed in an inactive file for two years, and then destroyed. Reports of investigations are destroyed 90 days after a security eligibility determination is made."

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Staff Director, Command Security Office, ATTN: DLA-I, Headquarters Defense Logistics Agency, Cameron Station, Alexandria, VA 22304-6100; and PLFAs Command Security Offices. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices."

NOTIFICATION PROCEDURES:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to or visit the Staff Director, Command Security Office, ATTN: DLA-I, Headquarters Defense Logistics Agency, Cameron Station, Alexandria, VA 22304-6100, or the PLFAs Command Security Office. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Staff Director, Command Security Office, ATTN: DLA-I, Headquarters Defense Logistics Agency, Cameron Station, Alexandria, VA 22304-6100, or the PLFAs Command Security Office. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices."

Written requests for access will contain the full name, SSN, date and place of birth, current address, and telephone number of the requester.

Written requests must either be notarized or contain an identity declaration penalty statement. If executed within the United States, its territories, possessions, or commonwealths the statement must read:

"I declare under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)."

If executed outside the United States, its territories, possessions, or commonwealths the statement must read:

"I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)."

The identity declaration statement must be signed and dated.

For personal visits, the requester must be able to provide some acceptable identification (e.g., driver's license, identification card), parent's name, date

and place of birth, dates and place(s) of employment with DLA, if applicable."

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The DLA rules for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, Personal Privacy and Rights of Individuals Regarding Their Personal Records; 32 CFR part 323; or may be obtained from the system manager."

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Delete entry and replace with "Parts of this system may be exempt under 5 U.S.C. 552a(k)(2) as applicable."

An exemption rule for this system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2) and (3)(c) and (e) and published in 32 CFR part 323. For additional information contact the system manager."

S500.10 DLA-I**SYSTEM NAME:**

Personnel Security Files.

SYSTEM LOCATION:

Command Security Office, Headquarters Defense Logistics Agency, Cameron Station, Alexandria, VA 22304-6100 and Command Security Offices, Defense Logistics Agency (DLA), Primary Level Field Activities (PLFAs). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All civilian employees and military personnel who have been the subject of a National Agency Check with Written Inquiries (NACI); a Background Investigation (BI); Special Background Investigation (SBI); or other personnel security investigation pertaining to their qualifications and eligibility to occupy sensitive positions, perform sensitive duties, or for access to classified information.

CATEGORIES OF RECORDS IN THE SYSTEM:

Evidence of security eligibility determinations and security clearances granted to individuals. Certifications of security briefings and debriefings signed by individuals. Reports of investigations conducted by the Office of Personnel Management, the Defense Investigative Service, the investigative units of the Army, Navy and Air Force, and other Federal investigative organizations containing unfavorable information requiring a security eligibility

determination by the DLA Central Adjudication Board.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 10450, as amended.

PURPOSE(S):

The records and reports are used by the HQ DLA Central Adjudication Board, Command Security Officers and other designated officials as a basis for determining a person's eligibility to occupy a sensitive position, perform sensitive duties, or for access to classified information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The "Blanket Routine Uses" set forth at the beginning of DLA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Paper records in file folders.

RETRIEVABILITY:

Records are retrieved alphabetically by name. No indices are used to retrieve individual records from the system.

SAFEGUARDS:

As a minimum, records are stored in locked containers wherever authorized DLA personnel are not present to control access to them.

Any of these files containing classified documents are maintained in security containers approved by HQ DLA for storage of classified information.

RETENTION AND DISPOSAL:

Records of security eligibility determinations, evidence of security clearances and related documents are retained as long as the person is employed or assigned to DLA. After the person leaves DLA, the reports are placed in an inactive file for two years, and then destroyed. Reports of investigations are destroyed 90 days after a security eligibility determination is made.

SYSTEM MANAGER(S) AND ADDRESS:

Staff Director, Command Security Office, ATTN: DLA-I, Headquarters Defense Logistics Agency, Cameron Station, Alexandria, VA 22304-6100; and PLFAs Command Security Offices. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to or visit the Staff Director, Command Security Office, ATTN: DLA-I, Headquarters Defense Logistics Agency, Cameron Station, Alexandria, VA 22304-6100, or the PLFAs Command Security Office. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Staff Director, Command Security Office, ATTN: DLA-I, Headquarters Defense Logistics Agency, Cameron Station, Alexandria, VA 22304-6100, or the PLFAs Command Security Office. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

Written requests for access will contain the full name, SSN, date and place of birth, current address, and telephone number of the requester.

Written requests must either be notarized or contain an identity declaration penalty statement. If executed within the United States, its territories, possessions, or commonwealths the statement must read:

"I declare under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)."

If executed outside the United States, its territories, possessions, or commonwealths the statement must read:

"I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)."

The identity declaration statement must be signed and dated.

For personal visits, the requester must be able to provide some acceptable identification (e.g., driver's license, identification card), parent's name, date and place of birth, dates and place(s) of employment with DLA, if applicable.

CONTESTING RECORD PROCEDURES:

The Defense Logistics Agency rules for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, Personal Privacy and Rights of Individuals Regarding Their Personal Records; 32 CFR part 323; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Reports of investigations conducted by the Office of Personnel Management, Federal Bureau of Investigations, Defense Investigative Service, investigative units of the Army, Navy, and Air Force, as well as other Federal investigative organizations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt under Title 5 U.S.C. 552a(k)(2) as applicable.

An exemption rule for this system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2) and (3)(c) and (e) and published in 32 CFR part 323. For additional information contact the system manager.

S160.50 DLA-I**SYSTEM NAME:**

Criminal Incidents/Investigations File, (55 FR 32947, August 13, 1990).

CHANGES:**SYSTEM IDENTIFIER:**

Delete entry and replace with "S500.20 DLA-I".

RETENTION AND DISPOSAL:

Delete entry and replace with "Records in the primary system are destroyed 5 years after the receipt of a final report except

(a) Criminal investigation reports generated and entered into the Defense Central Investigation Index by DLA criminal investigators, detectives, and command security officers are retained for 25 years;

(b) Reports of polygraph examinations are destroyed within 3 months after close of the investigation which included the examinations; and

(c) Documents related to legal or disciplinary actions are transferred to the appropriate file documenting such actions. Records at decentralized segments are destroyed 1 year after the receipt of a final report."

S500.20 DLA-I**SYSTEM NAME:**

Criminal Incidents/Investigations File.

SYSTEM LOCATION:

Primary system: Command Security Office and Office of General Counsel, Headquarters Defense Logistics Agency, Cameron Station, Alexandria, VA 22304-6100 for case files on all incidents of known or suspected criminal activity or other serious incidents.

Decentralized segments: Defense Logistics Agency (DLA) Primary Level Field Activities (PLFAs) for above described files and files of minor nature. Official mailing addresses are published as an appendix to DLA's compilation of record system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilian and military personnel of DLA, contractor employees, and other persons who committed or are suspected of having committed a felony or misdemeanor on DLA controlled activities or facilities; or outside of those areas in cases where DLA is or may be a party of interest.

CATEGORIES OF RECORDS IN THE SYSTEM:

Reports of investigation, messages, statements of witnesses, subjects and victims, photographs, laboratory reports, data collection reports, and other related papers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 21, Internal Security Act of 1950 (Pub. L. 831, 81st Congress); DoD Directive 5105.22, "Defense Logistics Agency" (32 CFR part 359); DoD Instruction 5240.4, "Reporting of Counterintelligence and Criminal Violations"; DoD Directive 5105.42, "Defense Investigative Service" (32 CFR part 361); and DoD Instruction 5505.2, "Criminal Investigations of Fraud Offenses".

PURPOSE(S):

Information is maintained for the purpose of monitoring the progress of investigations, identification of crime conducive conditions, crime and loss prevention, and preparation of statistical data required by higher authority.

Information in this system is used by DLA Security and General Counsel personnel to monitor progress of cases and to develop non-personal statistical data on crime and crime investigative support for the future. DLA General Counsel also uses data to review cases, determine proper legal action, and coordinate on all available remedies. DLA managers use the information to determine actions required to correct the causes of loss and to take appropriate action against DLA employees in cases of their involvement.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The "Blanket Routine Uses" published at the beginning of DLA's compilation of

record system notices apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Combination of paper and automated files.

RETRIEVABILITY:

Hardcopy records filed chronologically by DLA case number and cross-indexed to individual or file name. Automated records are retrievable by name of the individual or firm, DLA case number, PLFAs number or activity code.

SAFEGUARDS:

Records, as well as computer terminals, are maintained in areas accessible only to DLA Security and Office of General Counsel personnel. In addition, access to computerized files is limited to authorized users and is password protected.

RETENTION AND DISPOSAL:

Records in the primary system are destroyed 5 years after the receipt of a final report except

(a) Criminal investigation reports generated and entered into the Defense Central Investigation Index by DLA criminal investigators, detectives, and command security officers are retained for 25 years;

(b) Reports of polygraph examinations are destroyed within 3 months after close of the investigation which included the examinations; and

(c) Documents related to legal or disciplinary actions are transferred to the appropriate file documenting such actions. Records at decentralized segments are destroyed 1 year after the receipt of a final report.

SYSTEM MANAGER(S) AND ADDRESS:

Staff Director, Command Security Office, Headquarters Defense Logistics Agency, Cameron Station, Alexandria, VA 22304-6100, and all DLA PLFAs. Official mailing addresses are published as an appendix to DLA's compilation of record system notices.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Staff Director, Command Security Office, Headquarters Defense Logistics Agency, Cameron Station, Alexandria, VA 22304-6100, or the DLA PLFA where employed. Official mailing addresses are published as an appendix to the DLA's compilation of record system notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Staff Director, Command Security Office, Headquarters Defense Logistics Agency, Cameron Station, Alexandria, VA 22304-6100, or the DLA PLFAs where employed. Official mailing addresses are published as an appendix to DLA's compilation of record system notices.

Individual must provide full name, current address and telephone numbers.

CONTESTING RECORD PROCEDURES:

The Defense Logistics Agency rules for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, Personal Privacy and Rights of Individuals Regarding Their Personal Records; 32 CFR part 323; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Reports of investigations by DLA investigators, Security Officers, Federal, State, and local law enforcement and investigative agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Portions of this system may be exempt under 5 U.S.C. 552a(k)(2), as applicable.

An exemption rule for this system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3)(c) and (e) and is published at 32 CFR part 323. For more information contact the system manager.

S161.20 DLA-T

SYSTEM NAME:

Visitors and Vehicle Temporary Passes and Permits File, (50 FR 22904, May 29, 1985).

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with "S500.30 DLA-I."

STORAGE:

Delete entry and replace with "Records are stored in paper and computerized form."

SAFEGUARDS:

Delete entry and replace with "Records are maintained in areas accessible only to DLA personnel who must access the records to perform their duties. The computer files are password

protected with access restricted to authorized users."

RETENTION AND DISPOSAL:

Delete entry and replace with "For areas under maximum security, records are destroyed after 5 years; for other areas, records are destroyed after 2 years."

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Command Security Officers, DLA PLFAs. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices."

NOTIFICATION PROCEDURES:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Command Security Office, DLA PLFA where employed. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices."

Individual must provide full name and identity of DLA activity to which access was granted; and if individual is or was a DLA employee, identity of employing DLA activity."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to records about themselves in this system should address written inquiries to the Command Security Office, DLA PLFA where employed. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices."

Written requests should contain the full name, current address and telephone number of the individual. For personal visits, the individual should be able to provide some acceptable identification card, and give some verbal information that could be verified from his file."

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The Defense Logistics Agency rules for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, Personal Privacy and Rights of Individuals Regarding Their Personal Records; 32 CFR part 323; or may be obtained from the system manager."

S500.30 DLA-I**SYSTEM NAME:**

Visitors and Vehicle Temporary Passes and Permits File.

SYSTEM LOCATION:

Defense Logistics Agency (DLA) Primary Level Field Activities (PLFAs). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons requiring temporary access to DLA activities and facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications, surrendered passes, permits, and related papers relating to temporary visitor and vehicle passes or permits.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 21 of the Internal Security Act of 1950 (50 U.S.C. 781, et seq.) and Department of Defense Directives 5200.8 and 5105.22 (32 CFR part 359) which assign to the Director, DLA the responsibility for protection of property and facilities under his/her control.

PURPOSE(S):

Information is maintained to provide adequate controls on movement of vehicles and persons on DLA activities and facilities.

Information is used by DLA security personnel to ensure that only authorized persons and vehicles enter DLA activities and facilities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The "Blanket Routine Uses" set forth at the beginning of DLA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Records are stored in paper and computerized form.

RETRIEVABILITY:

Retrieved alphabetically by name.

SAFEGUARDS:

Records are maintained in areas accessible only to DLA personnel who must access the records to perform their duties. The computer files are password protected with access restricted to authorized users.

RETENTION AND DISPOSAL:

For areas under maximum security, records are destroyed after 5 years; for other areas, records are destroyed after 2 years.

SYSTEM MANAGER(S) AND ADDRESS:

Command Security Officers, DLA PLFAs. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Command Security Office, DLA PLFA where employed. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

Individual must provide full name and identity of DLA activity to which access was granted; and if individual is or was a DLA employee, identity of employing DLA activity.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves in this system should address written inquiries to the Command Security Office, DLA PLFA where employed. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

Written requests should contain the full name, current address and telephone number of the individual. For personal visits, the individual should be able to provide some acceptable identification card, and give some verbal information that could be verified from his/her file.

CONTESTING RECORD PROCEDURES:

The Defense Logistics Agency rules for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, Personal Privacy and Rights of Individuals Regarding Their Personal Records; 32 CFR part 323; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individuals applying for passes or permits and Security Office personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

S162.60 DLA-T**SYSTEM NAME:**

Police Force Records, (50 FR 22897, May 29, 1985).

CHANGES:**SYSTEM IDENTIFIER:**

Delete entry and replace with "S500.40 DLA-T".

SYSTEM LOCATION:

Delete entry and replace with "Defense Logistics Agency (DLA) Primary Field Activities (PLFAs). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices."

RETENTION AND DISPOSAL:

Change "5 years" to "1 year".

S500.40 DLA-I**SYSTEM NAME:**

Police Force Records.

SYSTEM LOCATION:

Defense Logistics Agency (DLA) Primary Field Activities (PLFAs). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DLA Security Police personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents relating to operation and use of security police, their security clearances, weapons qualification, training, uniforms, weapons, shift assignments and related papers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 21 of the Internal Security Act of 1950 (50 U.S.C. 781, et seq.) and Department of Defense Directive 5200.8 and 5105.22 (32 CFR part 359) which assign to the Director, DLA the responsibility for protection of property and facilities under his/her control.

PURPOSE(S):

Information is maintained and used by DLA Security Officers and Police Supervisors to maintain control of property, weapons and ammunition; to ensure proper training; to develop schedules and procedures to improve efficiency. Records are used to determine if an individual is qualified in the use of firearms and if he/she has a security clearance which would authorize him/her to handle classified information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The "Blanket Routine Uses" set forth at the beginning of DLA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, weapon cards, and property receipts. Computer magnetic tapes or discs, and computer paper printouts.

RETRIEVABILITY:

Retrieved alphabetically by name.

SAFEGUARDS:

Records are maintained in areas accessible only to DLA security supervisory personnel.

RETENTION AND DISPOSAL:

Destroy after 1 year or when superseded or obsolete, as applicable.

SYSTEM MANAGER(S) AND ADDRESS:

The Defense Logistics Agency (DLA) Primary Level Field Activities (PLFAs) who are responsible for the operation of base or facility security forces. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Defense Logistics Agency (DLA) Primary Level Field Activities (PLFAs) where individual is employed. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Defense Logistics Agency (DLA) Primary Level Field Activities (PLFAs) where individual is/was employed. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

Written requests for information should contain the full name, current address and telephone numbers of the individual. For personal visits, the individual should be able to provide some acceptable identification, such as, driver's license, employing office identification card, and give some

verbal information that could be verified from his/her file.

CONTESTING RECORD PROCEDURES:

The Defense Logistics Agency rules for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, Personal Privacy and Rights of Individuals Regarding Their Personal Records; 32 CFR part 323; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

DLA Security Officers and Security Police personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 92-18875 Filed 8-7-92; 8:45 am]

BILLING CODE 3810-01-F

DEPARTMENT OF EDUCATION

National Center or Centers for Research in Vocational Education

AGENCY: Department of Education.

ACTION: Correction.

SUMMARY: On July 10, 1992, a notice inviting applications for new awards under the National Center or Centers for Research in Vocational Education Program was published in the *Federal Register* (57 FR 30836-30850).

In the title of the program on page 30836, the words "Fiscal Year (FY) 1992" should be deleted and replaced with the words "Fiscal Year (FY) 1993." On page 30837, second column, under the Selection Criteria heading, the date "August 28, 1992" should be deleted and replaced by the date "September 4, 1992." In the third column, on the same page, 13 lines from the top of the column, the word "performance" should be deleted and replaced by the word "preference".

FOR FURTHER INFORMATION CONTACT:

Jackie L. Friederich, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 4525-MES), Washington, DC 20202-7242. Telephone (202) 205-9071. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 2404.

Dated: August 3, 1992.

Betsy Brand,

Assistant Secretary, Office of Vocational and Adult Education.

[FR Doc. 92-18846 Filed 8-7-92; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Pittsburgh Energy Technology Center; Research, Development, and Demonstration for Coke Oven Emission Control

AGENCY: Pittsburgh Energy Technology Center, Department of Energy.

ACTION: Notice of Financial Assistance Program Solicitation.

SUMMARY: The Department of Energy (DOE), Pittsburgh Energy Technology Center (PETC) announces that pursuant to 10 CFR 600.9, it intends to issue a program solicitation entitled "Research, Development and Demonstration for Coke Oven Emission Control".

DATES: The scheduled release date for the solicitation is on or about August 31, 1992. The scheduled closing date is one year after issuance of the solicitation.

ADDRESSES: Copies of the solicitation may be obtained by writing to the Department of Energy, Pittsburgh Energy Technology Center, Attention James W. Huemrich, Contract Specialist, Acquisition and Assistance Division, P.O. Box 10940, MS 921-118, Pittsburgh, PA.

FOR FURTHER INFORMATION CONTACT: James W. Huemrich (Contract Specialist), 412-892-6597 or Dale A. Siciliano (Contracting Officer), 412-892-6208.

SUPPLEMENTARY INFORMATION:

Program Solicitation No.: DE-PS22-92PC92638.

Title of Solicitation: Research, Development and Demonstration for Coke Oven Emission Control.

Term of Assistance Effort: Approximately one to five years.

Scope

The purpose of this announcement is to solicit applications for cost-shared Cooperative Agreements that would develop and demonstrate technologies to reduce hazardous coke oven emissions. Proposed projects should be designed to enable the coke industry to meet coke oven emission regulations that will be promulgated by the EPA in accordance with the 1990 Clean Air Act Amendments. These regulations include proposed 1998 and 2010 LAER standards, proposed MACT standards for pushing, quenching, and stack emissions, and standards aimed at further reduction of health risks.

This Program Solicitation calls for applications in the following four areas: (1) Coking Emission Control, (2) Product Recovery Emission Control, (3) Combustion Stack Gas Treatment, and (4) Residual Risk Reduction. Projects in

Coking Emission Control should provide technologies that would allow the industry to meet the 1998 and 2010 LAER standards by reducing charging emissions and leaks from oven doors, lids and offtakes. These projects may include charging emissions control, improved door designs or door sealing techniques, improved supplemental sealants or luting materials, improved work practices, pressure controls for individual ovens, leak detection and measurement systems, and other innovations. Projects in Product Recovery Emission Control should demonstrate work practices and technologies to reduce or eliminate pushing and quenching emissions in either recovery or non-recovery ovens. Such technologies may include enclosed systems to receive and cool the coke product, instruments to measure the maturity of coke inside the oven, instruments and methods to measure product recovery emissions, and others. Projects in Combustion Stack Gas Treatment should reduce the emissions that result from the combustion of gases produced in either recovery or non-recovery coke ovens. These projects may include characterization and monitoring of hazardous air pollutants in combustion stack emissions, and development of technologies and work practices for the reduction or treatment of combustion stack gases. Projects in Residual Risk Reduction should deal with the reduction of any health risks still remaining after the established MACT and LAER standards have been met. This includes reduction of fugitive and point source emissions anywhere in the coke producing facility. Projects in this area may focus on prevention of oven crack formation, including novel oven construction methods; reduction or elimination of leaks in the recovery-gas processing plant; more rigorous control of coking, product recovery, and stack gas emissions; accurate detection and measurement of various coke oven emissions; the use of flares to control bypass or bleeder-stack emissions; and evaluation of alternative coke oven operations and battery designs.

Each proposed project must be cost-shared, with Federal funding not exceeding 50% of the cost of any project, as directed by the 1990 Clean Air Act Amendments. This Program Solicitation will be available as stated in the effective date caption of this announcement. The closing date for submission of applications of applications is one year after the solicitation becomes available, as stated in the closing date caption of this announcement, and applications may be

submitted any time within this one year period. Each application, upon receipt within this one year period, shall be submitted for peer review. Awards will be made periodically on selected applications that have received a favorable evaluation. Copies of this solicitation may be obtained by writing to the address listed in this announcement.

Dated: July 31, 1992.
Dale A. Siciliano,
Contracting Officer.
[FR Doc. 92-18194 Filed 8-7-92; 8:45 am]
BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER92-492-000, et al.]

Virginia Electric and Power Company, et al., Electric Rate, Small Power Production, and Interlocking Directorate Filings

July 31, 1992.

Take notice that the following filings have been made with the Commission:

1. Virginia Electric and Power Co.

[Docket No. ER92-492-000]

Take notice that on July 10, 1992, Virginia Electric and Power Company (VEPCO) tendered for filing an amendment to its filing filed on April 29, 1992 in this docket.

Comment date: August 14, 1992, in accordance with Standard Paragraph E end of this notice.

2. Green Mountain Power Corp.

[Docket Nos. ER92-103-000, ER92-104-000, ER92-105-000, ER92-106-000, ER92-107-000, ER92-108-000]

Take notice that on July 24, 1992, Green Mountain Power Corporation (GMP) tendered for filing supplemental information regarding sales of system energy, system power, and unit power pursuant to sales agreements previously submitted in each of the above-captioned proceedings, including copies of transaction letters which have been conducted pursuant to the sales agreements filed in these dockets, and information previously filed in Docket No. ER92-460-000. GMP also filed an Opportunity Transaction Tariff, which provides for sales of system and unit power, and would supersede the sales agreements filed in the above-captioned dockets. Information filed in support of the Tariff includes cost support for GMP's tariff ceiling rates, and unexecuted service agreements for a number of utilities in the northeastern United States.

Comment date: August 14, 1992, in accordance with Standard Paragraph E at the end of this notice.

3. Southern Company Services

[Docket No. ER92-517-000]

Take notice that on July 24, 1992, Southern Company Services, Inc. acting on behalf of Alabama Power Company and Mississippi Power Company submitted, pursuant to Staff request, additional information concerning the Long Term Transmission Service Agreement dated April 27, 1992 between Entergy Power, Inc. and Alabama Power Company, Mississippi Power Company and Southern Company Services, Inc.

Southern Company Services, Inc. requests an effective date of July 1, 1992.

Comment date: August 14, 1992, in accordance with Standard Paragraph E at the end of this notice.

4. Wisconsin Electric Power Co.

[Docket No. ER92-740-000]

Take notice that on July 23, 1992, Wisconsin Electric Power Company (Wisconsin) tendered for filing a Notice of Cancellation of FERC Rate Schedule No. 67.

Comment date: August 14, 1992, in accordance with Standard Paragraph E at the end of this notice.

5. Entergy Power, Inc.

[Docket No. ER92-750-000]

Take notice that on July 27, 1992, Entergy Power, Inc. (Entergy Power) tendered for filing an extension of a capacity sale agreement between Entergy Power and the Tennessee Valley Authority in Docket No. ER92-601-000, and a cap on an energy pricing provision in Docket No. ER92-674-000. Entergy requests an effective date of July 20, 1992 for the extensive letter, June 1, 1992 for the energy cap in Docket No. ER92-601-000, and July 1, 1992 for the energy cap in Docket No. ER92-674-000. Entergy Power also requests waiver of the notice requirements under Section 35.11 of the Commission's regulations.

Comment date: August 14, 1992, in accordance with Standard Paragraph E at the end of this notice.

6. Puget Sound Power & Light Co.

[Docket No. ER92-749-000]

Take notice that on July 24, 1992, Puget Sound Power & Light Company (Puget) tendered for filing an amendment of the Transmission Service Agreement among Puget and the City of Seattle and Supplement Nos. 3-6 to the Transmission Service Agreement.

Comment date: August 14, 1992, in accordance with Standard Paragraph E at the end of this notice.

7. Oklahoma Gas & Electric Company

[Docket No. ER92-731-000]

Take notice that on July 20, 1992, Oklahoma Gas & Electric Company (OG&E) tendered for filing a Notice of Cancellation for FERC Rate Schedule Nos. 24, 35, 56, 61, 93, 98, 117 and 127.

Comment date: August 14, 1992, in accordance with Standard Paragraph E at the end of this notice.

8. New York State Electric & Gas Corporation

[Docket No. ER92-746-000]

Take notice that on July 27, 1992, New York State Electric & Gas Corporation (NYSEG) tendered for filing pursuant to Section 35.13 of the regulations under the Federal Power Act, a proposed rate schedule change to the borderline sales agreement between NYSEG and Central Hudson Gas & Electric (CHG&E) presently designated as Rate Schedule FERC No. 32. The proposed changes would increase NYSEG revenues from borderline sales to CHG&E by \$196,671 based on the 12 month period ending December 31, 1991. CHG&E revenues from borderline sales to NYSEG would increase \$64,474 for the same time period.

The proposal sets the rate for energy delivered at an effective, non-jurisdictional tariff rate of the selling company. Additionally, the supplement provides cost recovery for the construction of distribution facilities in accordance with the filed line extension policy of each company.

NYSEG has sent a copy of this filing to both CHG&E and the Public Service Commission of the State of New York.

Comment date: August 14, 1992, in accordance with Standard Paragraph E at the end of this notice.

9. Ocean State Power II

[Docket No. ER92-747-000]

Take notice that on July 27, 1992 Ocean State Power II (Ocean State II) tendered for filing the following supplements (the Supplements) to its rate schedules with the Federal Energy Regulatory Commission (FERC or the Commission):

Supplement No. 11 to Rate Schedule FERC No. 5

Supplement No. 11 to Rate Schedule FERC No. 6

Supplement No. 10 to Rate Schedule FERC No. 7

Supplement No. 10 to Rate Schedule FERC No. 8

The Supplements to the rate schedules request approval of Ocean State II's

proposed rate of return on equity for the period beginning on April 28, 1992, the requested effective date of the Supplements, and ending on the effective date of Ocean State II's updated rate of return on equity to be filed in February of 1993. Ocean State II is filing the Supplements pursuant to Section 7.5 of each of Ocean State II's unit power agreements with Boston Edison Company, New England Power Company, Montaup Electric Company, and Newport Electric Corporation, respectively, and the Commission's order in *Ocean State Power II*, 59 FERC ¶ 61,360 (1992). The Supplements constitute a rate decrease.

Copies of the Supplements have been served upon Boston Edison Company, New England Power Company, Montaup Electric Company, Newport Electric Corporation, the Massachusetts Department of Public Utilities, the Rhodes Island Public Utilities Commission and TransCanada PipeLines Limited.

Comment date: August 14, 1992, in accordance with Standard Paragraph E at the end of this notice.

10. Entergy Power, Inc.

[Docket No. ER92-516-002]

Take notice that on July 27, 1992, Entergy Power, Inc. tendered for filing an amendment in the above-referenced docket.

Comment dated: August 14, 1992, in accordance with Standard Paragraph E at the end this notice.

11. Tucson Electric Power Co.

[Docket No. ER92-389-000]

Take notice that on July 23, 1992, Tucson Electric Power Company (Tucson) tendered for filing an amended filing of an agreement entitled 1992 Short Term Power Sale Agreement (the Agreement) between Tucson and Citizens Utilities Company (Citizens). The Agreement established the terms for the sale of capacity and energy by Tucson to Citizens for the period commencing May 15, 1992 and ending September 30, 1992.

An amended filing is being made to include Tucson's response to data requests received from the Commission's Staff.

The parties request an effective date of May 15, 1992, and therefore request waiver of the Commission's regulations regarding filing.

Copies of this filing have been served upon all parties affected by this proceeding.

Comment date: August 14, 1992, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-18900 Filed 8-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6282-006 North Carolina]

Alternative Energy Resources, Inc.; Availability of Environmental Assessment

August 4, 1992.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47910), the Office of Hydropower Licensing (OHL) has reviewed the application for amendment of exemption for the Steele's Mill Hydroelectric Project.

The amendment includes the reinstallation of 4-foot-high flashboards on the existing Steele's Mill Dam. The addition of flashboards would increase the surface area of the existing 2-acre impoundment by 1/2 acre, and increase the volume by 9 acre-feet. The project is located on Hitchcock Creek, a tributary of the Pee Dee River in Richmond County, North Carolina.

The staff of OHL's Division of Project Compliance and Administration has prepared an Environmental Assessment (EA) for the proposed action. In the EA, staff concludes that approval of the amendment of exemption would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Reference and Information Center, room 3308, of the Commission's

Offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 92-18921 Filed 8-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM92-10-22-000]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

August 4, 1992.

Take notice that CNG Transmission Corporation ("CNG"), on July 30, 1992, pursuant to section 4 of the Natural Gas Act, Part 154 of the Commission's Regulations, and Section 12 of the General Terms and Conditions of CNG's tariff, tendered for filing the following proposed sheets for First Revised Volume No. 1 of its FERC Gas Tariff:

Substitute Eighth Revised Sheet No. 44

CNG requests an effective date for the proposed tariff sheet of July 31, 1992.

CNG states that the purpose of this filing is to flow through changes in take-or-pay costs allocated to CNG by Tennessee. On June 29, 1992, Tennessee filed tariff sheets to implement the Stipulation and Agreement in Docket Nos. RP86-119, *et al.*, effective July 1, 1992. The Commission has approved Tennessee's settlement by order dated June 25, 1992; Tennessee's June 29, 1992 compliance filing is pending Commission approval. In the June 29 compliance filing, Tennessee seeks to recover existing take-or-pay costs, plus "new transition costs" of \$2.2 million.

CNG states that copies of this filing have been mailed to CNG's customers and interested state commissions. Also, copies of this filing are available during regular business hours at CNG's main offices in Clarksburg, West Virginia.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-18908 Filed 8-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP91-1110-000, and -001]

Colorado Interstate Gas Company; Environmental Site Visits

August 3, 1992.

This is to inform all parties to the proceeding in the above docket that the environmental staff of the Federal Energy Regulatory Commission (FERC) will conduct a number of site visits along the route of the Colorado Interstate Gas Company (CIG) Uinta Basin Lateral Project. These site visits will enable FERC environmental staff to evaluate CIG's site-specific construction techniques, as well as to monitor CIG's compliance with the environmental conditions attached to its FERC Certificate. The first of these visits will occur on August 17 and 18, 1992.

Although future site visits will not be noticed, parties can obtain a schedule of proposed site visits to be conducted during a specific month by contacting the FERC Environmental Project Manager at the beginning of that month. All parties may attend the proposed site visits; however, parties must provide their own transportation and should pre-register with the FERC Environmental Project Manager. For further information, contact Mr. Laurence J. Sauter, Jr., Environmental Project Manager, at (202) 208-0205.

Lois D. Cashell,

Secretary.

[FR Doc. 92-18899 Filed 8-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-211-000]

El Paso Natural Gas Co.; Tariff Filing

August 4, 1992.

Take notice that on July 30, 1992, El Paso Natural Gas Company ("El Paso"), tendered for filing, pursuant to part 154 of the Federal Energy Regulatory Commission's ("Commission") Regulations Under the National Gas Act, Thirteenth Revised Sheet No. 101 and Third Revised Sheet Nos. 250 and 251 to El Paso's FERC Gas Tariff, Second Revised Volume No. 1.

El Paso states that the tendered tariff sheets, when accepted by the Commission and permitted to become effective, will provide for the elimination of the maximum rate under Rate Schedule IS-1, applicable to

interruptible sales, and in place thereof establish a negotiated gas cost rate. El Paso requests elimination of the maximum IS-1 rate in order to operate competitively in the market.

El Paso requests that the tendered tariff sheets be accepted by the Commission and permitted to become effective on September 1, 1992, which is not less than thirty (30) days following the date of the filing.

El Paso states that copies of the filing were served upon all interstate pipeline system sales customers of El Paso and all interested state regulatory commissions.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-18910 Filed 8-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-3-53-000]

K N Energy, Inc.; Proposed Changes in FERC Gas Tariff

August 4, 1992.

Take notice that K N Energy, Inc. ("K N") on July 31, 1992 tendered for filing proposed changes in its FERC Gas Tariff to adjust the rates charged to its jurisdictional customers pursuant to the Purchased Gas Adjustment provision (section 19) of the General Terms and Conditions of K N's FERC Gas Tariff, First Revision Volume No. 1-B to reflect changes in the Current Adjustment. The filing proposes increases (decreases) to K N's rates per Mcf as set forth in the table below:

	Zone 1	Zone 2
CD, SF and WPS Com-		
modity	\$0.1533	\$0.1533
D1 Demand	(0.0007)	(0.0010)
D2 Demand	(0.0113)	(0.0102)
WPS Demand	(0.0014)	(0.0020)
IOR Commodity	0.1413	0.1421

K N states that the filing reflects revision to its base tariff rates to reflect projected weighted average gas costs for the quarter ending November 30, 1992. The proposed effective date for the rate changes is September 1, 1992.

K N states that copies of the filing were served upon K N's jurisdictional customers and interested public bodies.

Any person desiring to be heard or to make any protest with reference to this filing should, on or before August 11, 1992, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a petition to intervene or a protest in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-18916 Filed 8-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-6-24-000; TM92-3-24-000]

Equitrans, Inc.; Proposed Change in FERC Gas Tariff

August 4, 1992:

Take notice that Equitrans, Inc. (Equitrans) on July 30, 1992 tendered for filing with the Federal Energy Regulatory Commission (Commission) the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1, to be effective August 1, 1992:

First Revised Thirty-Sixth Revised Sheet No. 10

First Revised Twenty-Sixth Revised Sheet No. 34

This filing implements an Out-of-Cycle Purchased Gas Cost Adjustment (PGA) to reflect increased gas costs charged by Texas Eastern Transmission Corporation under its Rate Schedule ED-1 filed in Docket No. TQ92-7-17 on July 30, 1992 to be effective August 1, 1992.

Also reflected in this filing is a monthly demand charge of \$3.62 per Dth of converted contract demand payable

to Tennessee for twelve months beginning July 1, 1992 pursuant to Tennessee's compliance filing implementing the Commission's approval of its comic settlement. The reconciliation charge, or exit fee, is being billed to Equitrans for the 65,134 Dth per day which it converted from firm sales to firm transportation on Tennessee's system.

The changes proposed in this filing to the purchased gas cost adjustment under Rate Schedule PLS is a decrease in the demand costs of \$1.7849 per dekatherm (Dth) and an increase in the commodity cost of \$1.0911 per Dth. The purchased gas cost adjustment to Rate Schedule ISS is an increase of \$0.7942 per Dth.

Pursuant to Section 154.51 of the Commission's Regulations, Equitrans requests that the Commission grant any waivers necessary to permit the tariff sheets contained herein to become effective on August 1, 1992.

Equitrans states that a copy of its filing has been served upon its purchasers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-18901 Filed 8-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-6-46-000]

Kentucky West Virginia Gas Co.; Proposed Change in FERC Gas Tariff

August 4, 1992.

Take notice that Kentucky West Virginia Gas Company (Kentucky West) on July 31, 1992, tendered for filing with the Federal Energy Regulatory Commission (Commission) an Out-of-Cycle PGA filing, which includes Thirty-Ninth Revised Sheet No. 41 to its FERC

Gas Tariff, Second Revised Volume No. 1, to become effective August 1, 1992. The revised tariff sheet reflects a current increase of \$0.4478 per Dth in the average cost of purchased gas resulting in a Weighted Average Cost of Gas of \$1.5847 per Dth.

Kentucky West states that effective August 1, 1992, pursuant to its obligations under various gas purchase contracts, it has specified a total price of \$1.5800 per Dth, inclusive of all taxes and any other production-related cost add-ons, that it would pay under these contracts.

Pursuant to § 154.51 of the Commission's regulations, Kentucky West requests waiver of the thirty day notice requirement to permit the tariff sheet attached hereto to become effective on August 1, 1992. In addition, Kentucky West requests waiver of § 154.304 of the Commission's regulations and any other provisions of the Commission's regulations necessary to permit the attached tariff sheet to become effective on August 1, 1992.

Kentucky West states that, by its filing, or any request or statement made therein, it does not waive any rights to collect amounts, nor the right to collect carrying charges applicable thereto, to which it is entitled pursuant to the mandate of the United States Court of Appeals for the Fifth Circuit issued on March 6, 1986, in *Kentucky West Virginia Gas Co. v. FERC*, 780 F.2d 1231 (5th Cir. 1986), or to which it is or becomes entitled pursuant to any other judicial and/or administrative decisions.

Kentucky West states that a copy of its filing has been served upon each of its jurisdictional customers and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before August 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-18909 Filed 8-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-5-15-000]

Mid Louisiana Gas Co.; Proposed Change of Rates

August 4, 1992.

Take notice that Mid Louisiana Gas Company ("Mid Louisiana") on July 31, 1992, tendered for filing as part of First Revised Volume No. 1 of its FERC Gas Tariff the Tariff Sheet and proposed effective date as set forth below:

1st Rev. Ninety-First, Rev. Sheet No. 3a
Superseding Ninety-First Revised Sheet No. 3a, August 1, 1992.

Mid Louisiana states that the purpose of the filing of 1st Rev. Ninety-First Rev. Sheet No. 3a is to reflect current gas costs for the month beginning August 1, 1992, in compliance with the Commission's Regulations issued in Order Nos. 483 and 483-A.

Mid Louisiana states that 1st. Rev. Ninety-First Rev. Sheet No. 3a is to reflect an increase of \$0.4957 in Mid Louisiana's current cost of gas, exclusive of surcharge.

Mid Louisiana states that the tariff sheet was filed as an out-of-cycle PGA to reflect the latest estimated gas cost to Mid Louisiana from its various suppliers. Mid Louisiana states that the majority of these suppliers have contracts with Mid Louisiana which contain pricing provisions which are tied to the spot market price of gas.

Mid Louisiana states that copies of this filing have been mailed to each of its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-18917 Filed 8-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-13-25-000]

Mississippi River Transmission Corp.; Rate Change Filing

August 4, 1992.

Take notice that on July 31, 1992 Mississippi River Transmission Corporation (MRT) tendered for filing Seventy-Ninth Revised Sheet No. 4, and Thirty-Eighth Revised Sheet No. 4.1 to its FERC Gas Tariff, Second Revised Volume No. 1 to be effective August 1, 1992. MRT states that the purpose of the instant filing is to reflect an out-of-cycle purchase gas cost adjustment (PGA).

MRT states that Seventy-Ninth Revised Sheet No. 4 and Thirty-Eighth Revised Sheet No. 4.1 reflect an increase of 40.49 cents per MMBtu in the commodity cost of purchased gas from PGA rates filed to be effective July 1, 1992, in Docket No. TQ92-12-25-000. MRT also states that since the June 29, 1992 filing date, MRT has experienced changes in purchase and transportation costs for its system supply that could not have been reflected in that filing under current Commission regulations.

MRT states that a copy of the filing has been mailed to each of MRT's jurisdictional sales customers and the State Commissions of Arkansas, Missouri, and Illinois.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-18905 Filed 8-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ92-14-25-000]

Mississippi River Transmission Corp.; Rate Change Filing

August 4, 1992.

Take notice that on July 31, 1992 Mississippi River Transmission Corporation (MRT) tendered for filing Eightieth Sheet No. 4 and Thirty-Ninth Revised Sheet No. 4.1 to its FERC Gas Tariff, Second Revised Volume No. 1, to be effective September 1, 1992.

MRT states that the instant filing reflects its quarterly purchased gas cost adjustment (PGA), submitted pursuant to § 154.308 of the Commission's Regulations and paragraph 17.2 of MRT's FERC Gas Tariff. MRT states that it is also adjusting the level of Account No. 858 expenses included in the average commodity cost of gas pursuant to the Transportation Cost Recovery Mechanism set forth in Article V of the Stipulation and Agreement in Docket No. RP89-248 approved by Commission order dated August 7, 1991. MRT states that the impact of the instant filing on its Rate Schedule CD-1 rates is an increase of 3.59 cents per MMBtu in the commodity charge from the rate levels established in MRT's last out-of-cycle PGA effective August 1, 1992 in Docket No. TQ92-13-25-000.

MRT states that a copy of the revised tariff sheets is being mailed to each of MRT's jurisdictional sales customers and to the State Commissions of Arkansas, Missouri, and Illinois.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-18920 Filed 8-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-7-16-000]

**National Fuel Gas Supply Corp.;
Proposed Changes in FERC Gas Tariff**

August 4, 1992.

Take notice that on July 30, 1992, National Fuel Gas Supply Corporation ("National") tendered for filing the following revised tariff sheet as part of its FERC Gas Tariff, Second Revised Volume No. 1, to become effective on August 1, 1992:

Twenty-First Revised Sheet No. 5

The purpose of this filing is to implement an Out-of-cycle Purchased Gas Cost Adjustment ("PGA") to be effective as of August 1, 1992.

Twenty-First Revised Sheet No. 5 reflects a positive current adjustment of 54.04 cents per dekatherm ("Dt"), from National's July Out-of-cycle PGA on June 30, 1992, in Docket No. TQ92-6-16-000. The revised RQ and CD sales commodity rate of 244.25 cents per Dt is based upon a current average cost of purchased gas of 200.24 cents per Dt (in unit of purchases), or 212.25 cents per Dt (in unit of sales).

National further states that copies of this filing were served upon the Company's jurisdictional customers and the Regulatory Commissions of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts and New Jersey.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 or 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All such motions to intervene or protests should be filed on or before August 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-18919 Filed 8-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-10-59-000]

**Northern Natural Gas Co.; Proposed
Changes in FERC Gas Tariff**

August 4, 1992.

Take notice that Northern Natural Gas Company (Northern), on July 31, 1992 tendered for filing changes in its F.E.R.C. Gas Tariff, Third Revised Volume No. 1 (Volume No. 1 Tariff) and Original Volume No. 2 (Volume No. 2 Tariff).

Northern is filing the revised tariff sheets to adjust its Base Average Gas Purchase Cost in accordance with the Quarterly PGA filing requirements codified by the Commission's Order Nos. 483 and 843-A. The instant filing reflects a Base Average Gas Purchase Cost of \$2.4259 per MMBtu to be effective August 1, 1992.

Northern states that copies of the filing were served upon Northern's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's rules and regulations. All such motions or protests should be filed on or before August 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-18903 Filed 8-7-92; 8:45 am]

BILLING CODE 6717-01-M

[RP92-210-000]

**Northern Border Pipeline Co.;
Proposed Changes in FERC Gas Tariff**

August 4, 1992.

Take notice that on July 30, 1992, Northern Border Pipeline Company (Northern Border) requested a waiver of § 4.83(a) of its General Terms and Conditions in its F.E.R.C. Gas Tariff, Original Volume No. 1, pursuant to Rule 101 of the Commission's Rules of Practice and Procedure, 18 CFR 385.101(e).

Northern Border plans to add approximately \$158 million to its rate base on or about November 1, 1992 with the completion of its expansion project,

certificated in Docket No. CP91-967-002. Because Northern Border's tariff uses the beginning and end of month balances to calculate an average balance for gross plant, the significant additions scheduled to be added to gas plant in service will not be recognized until the end of month balance. The averaging process in Northern Border's tariff will result in recognition of those asset additions for only one-half of the month if the in-service date is November 1 or for one-half of the month of October if the facilities are placed in-service on October 31. On the other side of the cost of service allocation equation, the increase in volumes will be automatically reflected on the in-service date. In order to match rate base with the volumes, Northern Border requests that for the in-service month of the CP91-967-002 facilities, the gross plant components of rate base be calculated using a daily weighted average balance approach rather than the two point average balance method described in the tariff.

Northern Border has requested approval of this waiver by September 18, 1992.

Any person desiring to be heard or to protest said filing should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18CFR 385.211, 385.214). All such petitions or protests should be filed on or before August 11, 1992. Protests will be considered but not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene.

Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-18918 Filed 8-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-5-28-000 and TM92-4-28-000]

**Panhandle Eastern Pipe Line Co.;
Proposed Changes in FERC Gas Tariff**

August 4, 1992.

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on July 31, 1992, tendered for filing the following revised tariff sheets listed on Appendix A to the filing, to its FERC Gas Tariff, Original Volume Nos. 1 and 2, to be effective September 1, 1992.

Panhandle states that the revised tariff sheets filed herewith reflect a commodity rate decrease of (44.77¢) per Dt. for customers served under the sales rate schedules. This decrease includes:

- (1) A (12.81¢) per Dt. decrease in the projected purchased gas cost component computed in accordance with Section 18.2 of the General Terms and Conditions of Panhandle's tariff; and
- (2) A (16.19¢) per Dt. decrease pursuant to Section 22 of the General Terms and Conditions of Panhandle's tariff (ANGTS tracking mechanism).

(3) A (15.77¢) per Dt. decrease pursuant to Section 27 of the General Terms and Conditions of Panhandle's tariff (Transportation Cost Adjustment). Panhandle further states that the revised tariff sheets filed herewith also reflect the following changes to Panhandle's demand rates for customers served under sales rate schedules:

- (1) An increase of \$1.20 per Dt. pursuant to Section 22 of the General Terms and Conditions of Panhandle's tariff (ANGTS tracking mechanism); and
- (2) A decrease of (\$0.01) per Dt. pursuant to Section 27 of the General Terms and Conditions of Panhandle's tariff (Transportation Cost Adjustment); and

(3) A decrease of (\$0.60) per Dt. to reflect a decrease pursuant to § 18.4 of the General Terms and Conditions of Panhandle's tariff (pipeline suppliers' demand costs).

Panhandle states that the above-referenced tariff sheets are being filed in accordance with § 154.308 (Quarterly PGA Filing) of the Commission's Regulations and pursuant to §§ 18.1, 18.4 (Purchased Gas Demand Rate Adjustments by Pipeline Suppliers), Section 22 (ANGTS tracking mechanism) and Section 27 (Transportation Cost Adjustment) of Panhandle's FERC Gas Tariff, Original Volume No. 1 to reflect the changes in Panhandle's jurisdictional sales rates effective September 1, 1992.

Panhandle states the revised tariff sheets filed herewith also reflect the following changes to Panhandle's transportation rates for transportation service provided under Rate Schedules PT-Firm, PT-Interruptible and SCT:

- (1) An increase of \$0.06 per Dt. pursuant to Section 6.18 of Rate Schedule PT-Firm.
- (2) An increase of 0.20¢ per Dt. pursuant to Section 6.16 of Rate Schedule PT-Interruptible.

Panhandle states that copies of its filing have been served on all jurisdictional customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to

intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with such motions 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,
Secretary.

[FR Doc. 92-18922 Filed 8-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-3-55-000]

Questar Pipeline Co.; Rate Change

August 4, 1992.

Take notice that on July 31, 1992, Questar Pipeline Company (Questar) tendered for filing and acceptance to be effective September 1, 1992, Twentieth Revised Sheet No. 12, to Original Volume No. 1 of its FERC Gas Tariff.

Questar states that the purpose of this filing is to adjust the purchased gas cost under its sale-for-resale Rate Schedule CD-1 effective September 1, 1992.

Questar states that the Twentieth Revised Sheet No. 12 shows a commodity base cost of purchased gas as adjusted of \$2.82432/Dth which is \$0.35829/Dth lower than the currently effective rate of \$3.18261/Dth. The demand base cost of purchased gas as adjusted decreased \$0.00429/Dth, from \$0.00675/Dth to \$0.00246/Dth.

Questar states that a copy of the filing has been provided to Mountain Fuel Supply Company and interested state public service commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection in the public reference room.

Lois D. Cashell,
Secretary.

[FR Doc. 92-18906 Filed 8-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-212-000]

Questar Pipeline Co.; Tariff Filing

August 4, 1992.

Take notice that Questar Pipeline Company, on July 30, 1992, tendered for filing and acceptance to be effective August 29, 1992, First Revised Sheet Nos. 25 and 28 to Original Volume No. 2-A of its FERC Gas Tariff.

Questar states that this filing revises certain storage-service request procedures reflected in §§ 2.2, 2.3 and 2.7 of the General Terms and Conditions to Original Volume No. 2-A of its FERC Gas Tariff.

Questar states further that this filing was served upon the Wyoming and Utah public service commissions as well as all other parties designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with Rules 385.211 and 385.214 of the Commission's Rules and Regulations 18 CFR 385.211 and 385.214. All such motions or protests should be filed on or before August 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,
Secretary.

[FR Doc. 92-18909 Filed 8-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-213-000]

Tennessee Gas Pipeline Co.; Filing

August 4, 1992.

Take notice on July 31, 1992, Tennessee Gas Pipeline Company (Tennessee) tendered for filing the following revised tariff sheets in Fourth Revised Volume No. 1 of its FERC Gas

Tariff to be effective on September 1, 1992:

First Revised Sheet No. 163
First Revised Sheet No. 175
Second Revised Sheet No. 267

Tennessee states that this filing is being made (1) to amend certain provisions concerning how gas is routed for billing purposes and (2) to change the location where prepayments are made for service under Rate Schedules FT-A and FT-B.

Tennessee states that copies of its filing are available for inspection at its principal place of business in the Tenneco Building, Houston, Texas, and have been mailed to all affected customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure 18 CFR 385.211 and 385.214. All such motions or protests should be filed on or before August 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 92-18907 Filed 8-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-7-17-000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

August 4, 1992.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on July 30, 1992 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the tariff sheets listed on Appendix A to the filing.

The proposed effective date of these revised tariff sheets is August 1, 1992.

Texas Eastern states that these tariff sheets are being filed pursuant to section 23, Purchased Gas Cost Adjustment contained in the General Terms and Conditions of Texas Eastern's FERC Gas Tariff and pursuant to Order No. 483 issued November 10, 1987 in Docket No. RM86-14. As contemplated in Docket No. RM86-14 and Order No. 483, this filing constitutes an out-of-cycle PGA rate increase.

Texas Eastern states that in compliance with § 154.308(b)(2) of the Commission's Regulations, a report containing detailed computations for the derivation of the current adjustment to be applied to Texas Eastern's effective rates is enclosed in the format as prescribed by FERC Form No. 542-PGA (Revised) and FERC's NOTICE OF CRITERIA FOR ACCEPTING ELECTRONIC PGA FILINGS dated April 12, 1991.

Texas Eastern states that the change proposed in this out-of-cycle PGA filing is a commodity sales rate increase of \$0.2745/dth based upon the change in Texas Eastern's projected August 1992 through October 1992 quarterly cost of purchased gas from Texas Eastern's August 1, 1992 quarterly PGA in Docket No. TQ92-6-17 filed on July 1, 1992.

Texas Eastern states that the projected commodity gas costs reflected in this filing are the result of the ongoing efforts by Texas Eastern, in both the short term and long term, to secure gas supplies at the lowest reasonable cost consistent with contractual obligations and security of supply for the customers.

Texas Eastern states that on April 15, 1992 the Commission approved Texas Eastern's August 19, 1991 Stipulation and Agreement, as supplemented December 10, 1991, in Docket Nos. RP90-119-010 and RP91-119-006 which resolved cost of service issues in those dockets. As a result, Texas Eastern filed tariff sheets on June 15, 1992 reflecting the settlement rates as prescribed in Article II of such Stipulation and Agreement.

Texas Eastern states that on July 8, 1992 the Commission issued an order approving Texas Eastern's June 15, 1992 filing. Texas Eastern states that the substitute tariff sheets listed on Appendix A reflect Texas Eastern's settlement rates adjusted for the PGA change proposed herein as recalculated pursuant to the settlement to be effective August 1, 1992. Texas Eastern states that since settlement rates are anticipated to be billed commencing September 1, 1992, the substitute tariff sheets will be used (1) for determining refunds for the month of August, 1992 and (2) for billing purposes commencing September 1, 1992.

Texas Eastern states that copies of its filing have been served on all Authorized Purchasers of Natural Gas from Texas Eastern and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules

and Regulations. All such motions or protests should be filed on or before August 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on a file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-18923 Filed 8-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-8-18-000]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

August 4, 1992.

Take notice that Texas Gas Transmission Corporation (Texas Gas), on July 30, 1992, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Fifty-ninth Revised Sheet No. 10
Fifty-ninth Revised Sheet No. 10A
Fortieth Revised Sheet No. 11
Thirtieth Revised Sheet No. 11A
Thirtieth Revised Sheet No. 11B

Texas Gas states that these tariff sheets reflect changes in purchased gas costs pursuant to an Out-of-Cycle PGA Rate Adjustment and are proposed to be effective August 1, 1992. Texas Gas further states that the proposed tariff sheets reflect a commodity rate increase of \$.0018 per MMBtu, a D-1 demand rate increase of \$.1100 per MMBtu, and an SGN Standby rate increase of \$.0090 per MMBtu from the rates set forth in the Quarterly PGA filed June 30, 1992 (Docket No. TQ92-7-18).

Texas Gas states that copies of the filing were served upon Texas Gas's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies

of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,
Secretary.

[FR Doc. 92-18911 Filed 8-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-3-56-000]

**Valero Interstate Transmission Co.;
Proposed Changes in FERC Gas Tariff**

August 4, 1992.

Take notice that Valero Interstate Transmission Company ("Vitco"), on July 31, 1992 tendered for filing the following tariff sheet as required by Orders 483 and 483-A containing changes in Purchased Gas Cost Rates pursuant to such provisions:

FERC Gas Tariff, First Revised Volume No. 2
5th Revised Sheet No. 6

Vitco states that this filing reflects changes in its purchased gas cost rates pursuant to the requirements of Orders 483 and 483-A. The change in rates to Rate Schedule S-3 includes an increase in purchased gas cost of \$0.6401 per MMBtu as compared to the previously scheduled annual PGA filing.

The proposed effective date of the above filing is September 1, 1992. Vitco requests a waiver of any Commission order or regulations which would prohibit implementation by September 1, 1992.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,
Secretary.

[FR Doc. 92-18904 Filed 8-7-92; 8:45 am]

BILLING CODE 6717-01-M

Issuance of Decisions and Orders

**Office of Hearings and Appeals During
the Week of June 15 Through June 19,
1992**

During the week of June 15 through June 19, 1992, the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Remedial Order

*Murphy Oil Corporation, et al., 6/17/92
KRO-0460*

Murphy Oil Corporation (Murphy), Murphy Oil, U.S.A., Inc. (Murphy, U.S.A.), Ocean Drilling and Exploration Company (Ocean Drilling), and ODECO Oil and Gas Company (ODECO) objected to a Proposed Remedial Order (PRO) which the Economic Regulatory Administration (ERA) issued to them on December 15, 1986. The PRO alleged that during the period September 1973 through December 1979 (the audit period), the respondents violated the price regulations in sales of crude oil from certain of their producing properties in Texas, Montana, Mississippi, and Louisiana. On the basis of these alleged violations, the PRO found that the respondents are liable for a total of \$13,366,664.60 in overcharges, plus interest on that amount. In considering the respondents' objections, the DOE found that the regulatory definition of "property" was valid and had been properly applied in the PRO. On the basis of extensive evidentiary submissions, the DOE determined that portions of ODECO's ship Shoal Unit did not qualify for separate property treatment on the basis of its underlying geological structures. The DOE also found that the PRO properly treated ODECO's OCS-043 Lease and Murphy's Trimble Assignment and Weaver Unit as single properties. The DOE next found that the PRO had properly applied the stripper well regulation to three Murphy properties and that Murphy's W.A. Moncrief Unit did not qualify as a marginal property. With respect to posted price issues, the DOE found that the PRO had applied the correct posted price to three Murphy properties and properly found that ODECO violated the regulations when it required purchasers of crude oil from its offshore leases to pay transportation costs in addition to the posted price. The DOE further found that ODECO's shifting of transportation costs to its customers violated the Normal Business Practices Rule. The

DOE next determined that the PRO properly computed the overcharges against each respondent and that additional offsets of overcharges to reflect Murphy's refiner banks were not proper. The DOE modified the PRO to find Murphy and Murphy Oil, U.S.A., liable for the overcharges of the other PRO respondents, and Ocean Drilling liable for the overcharges for ODECO. Finally, at the suggestion of the ERA, the DOE modified the PRO's self-audit requirements to limit the self-audit to respondent-designated properties where there is a substantial likelihood that regulatory violations occurred. The DOE also required the ERA to issue a Supplemental Proposed Remedial Order for any overcharges it seeks to collect as a result of the self-audit.

Refund Applications

*Big Chief Roofing Company,
Daingerfield Manufacturing
Company, 6/18/92, RR272-86,
RR272-87*

The DOE issued a Decision and Order granting Motions for Reconsideration filed on behalf of two companies in the subpart V crude oil refund proceeding. The original Applications were denied because the applicants had not documented their purchase volumes. As a general rule, Motions for Reconsideration filed after the June 30, 1988 deadline in the crude oil refund proceeding, even though involving Applications filed before the deadline, would be considered as past—June 30, 1988 submissions. However, due to the circumstances of these cases, an exception was made, and the Motions were considered as having been filed before June 30, 1988 for the purposes of receiving additional refunds.

Nox-Crete, Inc., 6/17/92, RF272-67171

The DOE issued a Decision and Order denying an Application for Refund submitted by Nox-Crete, Inc., in the subpart V crude oil refund proceeding. The applicant requested a refund based on neutral oil that it had purchased and blended with other materials so that 60 percent of the total volume of the blend was neutral oil. In its Application, the applicant claimed that blending the neutral oil substantially changed it and that the applicant was therefore not a reseller of oil. The DOE found that the applicant, by selling the blend, fell within the class of firms comprised of refiners, resellers, and retailers. Applicants from this class of firms must submit specific evidence of injury to receive a refund in the subpart V crude oil overcharge refund proceeding. The DOE denied the Application because the

applicant did not submit the required specific evidence of injury.

Standard Oil Co. (Indiana)/Nebraska, 6/19/92, RM21-258, RM251-259

The DOE issued a Decision and Order granting a Motion for Modification of previously-approved second-stage refund plans filed by the State of Nebraska in the Amoco special refund proceeding. Oklahoma requested permission to use \$150,000 of Amoco I and Amoco II monies which the State received for other second-stage refund plans to create a state-wide energy information service. The DOE found that the program would provide restitution by educating injured Nebraskans on ways to conserve energy and reduce energy costs, thus providing immediate, tangible benefits to consumers of refined petroleum products. Accordingly, the State's Motion for Modification was granted.

United Refining Company/Major Oils, 6/17/92, RF333-19

The DOE issued a Decision and Order denying the Application for Refund submitted by Energy Refunds, Inc., on behalf of Major Oils in the United Refining Company refund proceeding. On two occasions, the DOE requested that the applicant submit sample records that substantiated its refund claim. Moreover, the DOE indicated that if no records existed, it might accept a clear and complete explanation of how it estimated its gallonage claim. However, the applicant never submitted these records nor provided an explanation of its estimation technique. Accordingly, because the information provided by Major Oils was insufficient to demonstrate the volume of its United petroleum product purchases, the DOE denied its Application for Refund.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Company/ Alcorn Fence Co. et al.	RF304-12979	06/19/92
Atlantic Richfield Company/ Harsco Corporation et al.	RF304-12851	06/19/92
Atlantic Richfield Company/ John Quill Automotive et al.	RF304-12690	06/19/92

Atlantic Richfield Company/ Ron's Party Store.	RF304-7049	06/15/92
Christy's Arco #1.	RF304-8822	
Canterbury School District et al.	RF272-87519	06/19/92
Dahlen Transport, Inc.	RF272-18997	06/19/92
Dahlen Transport, Inc.	RF272-18997	
Darrington School District et al.	RF272-80505	06/19/92
Foresee Farm & Equipment et al.	RF272-65659	06/15/92
Guiley Trucking, Inc.	RF272-65827	
Hofferber Truck Lines, Inc.	RF272-68846	
Gulf Oil Corporation/ City of High Point.	RF300-20237	06/18/92
Gulf Oil Corporation/ Del Cook Lumber Co., et al.	RF300-15065	06/17/92
Gulf Oil Corporation/ Double Eagle Lubricants, Inc. et al.	RF300-12793	06/19/92
Gulf Oil Corporation/ G&M Service Center.	RF300-20236	06/18/92
Gulf Oil Corporation/J. Smith Gulf et al.	RF300-17001	06/18/92
Gulf Oil Corporation/ Skipper's Gulf #2 et al.	RF300-14421	06/18/92
Henderson County et al.	RF272-86002	06/19/92
Knowlton Township School District et al.	RF272-80016	06/15/92
Linden Unified et al.	RF272-86008	06/19/92
MTD Products, Inc.	RF272-64595	06/18/92
Searcy School District et al.	RF272-78810	06/19/92
Swiss Valley Farms Co.	RF272-159	06/19/92
Swiss Valley Farms Co.	RF272-160	
Texaco Inc./ Drinkwater Texaco et al.	RF321-8442	06/19/92
Texaco Inc./ Larry McCoy's Texaco.	RF321-18691	06/17/92
Texaco Inc./ Royal Texaco.	RF321-18704	06/18/92
Texaco Inc./ Vicksburg LP Gas Co. et al.	RF321-13203	06/19/92
Township of Ohio et al.	RF272-86210	06/19/92
Triway Local School District.	RF272-86174	06/17/92
Hampden Public Schools.	RF272-86182	
City of Norwich	RF272-86189	

United Refining Company/Erie Oil.	RF333-8	06/19/92
United Refining Company/R.L. Gaudet CO., Inc.	RF333-4	06/17/92
Export Fuel Co., Inc.	RF333-20	

Dismissals

The following submissions were dismissed:

Name	Case No.
A.J. Beninato & Sons, Inc.	RF321-18597
Atwood Hammond C.U. School District 39.	RF272-81022
Beck's Texaco	RF321-6106
Beyer & Fortner, Inc.	RF333-3
Blind Brook-Rye School District	RF272-80455
Brumfield's Gulf Station	RF300-12499
C.E. Molsinger Gulf	RF300-14535
Chun Tuk Yi	RF304-13034
E.R. Coleman	RF321-18524
Economy Rentals, Inc.	RF321-18574
Energy Petroleum Co.	RF300-12785
Ferrier Bros. Bridge Co.	RF321-18569
Grammer's Gulf	RF300-116
John's Gulf Service	RF300-11620
Marathon Garbage Service, Inc.	RF321-18582
New Waverly ISD	RF272-87125
Pembroke Central Schools	RF321-18550
Pender Shook's Gulf	RF300-14522
Petra Cruise Lines	RF272-66368
Pine Valley Texaco	RF321-4247
Randolph & Vincent University Gulf	RF300-12299
Roberts Texaco At 1401	RF321-3347
Roy W. Dunn	RF321-18551
Sequist Freeway Texaco	RF321-3924
Silvestri Service Gulf	RF300-12875
Sims Oil Co.	RF300-14519
Teague Industries, Inc.	RF300-12769
Texas Trucking Co., Inc.	RF300-12489
Turner Bros. Co., Inc.	RF321-18526
U.S. Fuel Company	RF321-18566
Vince Stein, Inc.	RF333-7
Young's Industries, Inc.	RF321-18564

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: August 4, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 92-18915 Filed 8-7-92; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4192-7]

Agency Information Collection Activities Under OMB Review**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces OMB responses to Agency PRA clearance requests.

SUPPLEMENTARY INFORMATION:**OMB Responses to Agency PRA Clearance Requests****OMB Approvals**

EPA ICR No. 1062.04; NSPS Monitoring for Coal Preparation Plants—Subpart Y; was approved 06/01/92; OMB No. 2060-0122; expires 06/30/95.

EPA ICR No. 1607.01; Survey of Wood Furniture Manufacturers; was approved 06/03/92; OMB No. 2060-0236; expires 06/30/95.

EPA ICR No. 1569.01; Development and Approval Guidance for Coastal Nonpoint Pollution Programs (CZARA Section 6217); was approved 06/10/92; OMB No. 2040-0153; expires 06/30/95.

EPA ICR No. 1572.01; Hazardous Waste Specific Unit Requirements and Special Waste Processes and Types; was approved 06/22/92; OMB No. 2050-0050; expires 06/30/93.

EPA ICR No. 1612.01; Low-Cost, Small System Technology Data Collection; was approved 06/24/92; OMB No. 2040-0154; expires 06/30/95.

EPA ICR No. 0827.03; Construction Grants Program Information Collection Request; was approved 06/30/92; OMB No. 2040-0027; expires 06/30/95.

EPA ICR No. 0596.04; Application and Summary Report for an Emergency Exemption for Pesticides; was approved 07/07/92; OMB No. 2070-0032; expires 07/31/95.

EPA ICR No. 1063/05 NSPS for Sewage Treatment Plant Incineration (Subpart O) Reporting and Recordkeeping Requirements; was approved 07/09/92; OMB No. 2060-0035; expires 07/31/95.

OMB Partial Approval

EPA ICR No. 1061.05; Standard of Performance for the Phosphate Fertilizer Industry (NSPS subparts T, U, V, W, X); this collection of information was approved except for the requirement to record daily the amount of phosphorus

pentoxide (p205) stored; OMB No. 2060-0037; expires 06/30/95.

Conditional Approval

EPA ICR No. 1158.04; Standards of Performance for new Stationary Sources, Rubber Tire Manufacturing Industry; was approved 07/10/92; OMB 2060-0156; expires 07/31/95. This collection of information received a conditional approval from OMB. For a copy of the notice containing the conditions, please call Sandy Farmer on (202) 260-2740.

OMB Extensions of Expiration Dates

EPA ICR No. 1276; Reporting and Recordkeeping for Asbestos Ban and Phase-Out Rule; OMB No. 2070-0082; expiration date extended to 12/31/92.

EPA ICR No. 0138; Modification of Secondary Treatment Requirements for Discharges into Marine Waters; OMB No. 2040-0088; expiration date extended to 08/31/92.

Agency Withdrawal

EPA ICR No. 1567.01; Duplication of Work; was withdrawn at the request of the Agency.

Dated: July 24, 1992.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 92-18933 Filed 8-7-92; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4192-6]

Clean Air Act; Contractor Access To Confidential Business Information**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice.

SUMMARY: The EPA has authorized that two subcontractors receive access to information that has been, or will be, submitted to EPA under section 114 of the Clean Air Act (CAA) as amended. The Radian Corporation, 3200 E. Chapel Hill Road, Research Triangle Park, North Carolina is the primary contractor. The following are subcontractors that will provide technical assistance to Radian; (1) Energy Environmental Research Corporation, 3710 University Drive, Suite 160, Durham, North Carolina, contract number 68D10117; (2) Alpha-Gamma Technologies, Inc. 900 Ridgefield Drive, Suite 350, Durham, North Carolina, contract number 68D10117.

Some of the information may be claimed to be confidential business information (CBI) by the submitter.

DATES: Access to confidential data submitted to EPA will occur no sooner than August 15, 1992.

FOR FURTHER INFORMATION CONTACT:

Gene W. Smith, Document Control Officer, Office of Air Quality Planning and Standards (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, (919) 541-5439.

SUPPLEMENTARY INFORMATION: The EPA is issuing this notice to inform all submitters of information under section 114 of the CAA that EPA may provide the above mentioned subcontractors access to these materials on a need-to-know basis. The contractor with the assistance of the subcontractors will provide technical support to the Office of Air Quality Planning and Standards (OAQPS) in source assessment or with a source category survey and proceed through development of standards for a Federal Air Pollution Control Regulation or Control Techniques Guidelines (CTG).

In accordance with 40 CFR 2.305(h), EPA has determined that each subcontractor requires access to CBI submitted to EPA under sections 112 and 114 of the CAA in order to perform work satisfactory under the above noted contracts. The subcontractors' personnel will be given access to information submitted under Section 114 of the CAA. Some of the information may be claimed or determined to be CBI. The subcontractors' personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to CBI. All access to CAA CBI under these contracts will take place at the subcontractors' facility. Clearance for access to CAA CBI under each contract is scheduled to expire on August 1, 1996.

Dated: August 3, 1992.

Michael Shapiro,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 92-18934 Filed 8-7-92; 8:45 am]

BILLING CODE 6560-50-M

[FRL-41932]

Revision of the Nevada National Pollutant Discharge Elimination System (NPDES) to Authorize the Issuance of General Permits**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice of approval of the National Pollutant Discharge

Elimination System General Permits Program of the State of Nevada.

SUMMARY: On July 27, 1992, the Regional Administrator for the Environmental Protection Agency (EPA), Region 9, approved the State of Nevada's National Pollutant Discharge Elimination System (NPDES) General Permits Program. On April 24, 1992, the Nevada Department of Conservation and Natural Resources (DCNR) submitted a formal request for approval to revise its NPDES Permit Program to authorize the issuance of general NPDES permits. This action authorizes the State of Nevada to issue general permits in lieu of individual NPDES permits. EPA has determined this program modification to be non-substantial because general permit program modifications have traditionally been viewed as non-substantial, and in addition, during the development of the State's regulations for implementing the program, commenters were supportive of the program modification. The finalization of this program approval should also be expedited in order to facilitate implementation of the NPDES storm water program in the State of Nevada.

FOR FURTHER INFORMATION CONTACT: Eugene Bromley, U.S. Environmental Protection Agency, Region 9 (W-5-1), 75 Hawthorne Street, San Francisco, CA 94105, 415-744-1906.

SUPPLEMENTARY INFORMATION:

I. Background

EPA regulations at 40 CFR 122.28 provide for the issuance of general permits to regulate the discharge of wastewater which results from substantially similar operations, are of the same type wastes, require the same effluent limitations or operating conditions, require similar monitoring and are more appropriately controlled under a general permit rather than by individual permits.

Nevada was authorized to administer the NPDES program in September, 1975. As previously approved, the State's program did not include provisions for the issuance of general permits. There are a number of categories of discharges which could be appropriately regulated by general permits. For these reasons, the Nevada DCNR requested a revision of the State's NPDES program to provide for the issuance of general permits. Storm water discharges are the discharges which are currently under consideration for the general permit program. However, additional categories could be considered in the future.

Each general permit will be subject to EPA review and approval as provided by 40 CFR 123.44. Public notice and opportunity to request a hearing is also provided for each general permit.

II. Discussion

The State of Nevada submitted in support of its request, copies of the relevant statutes and regulations for implementing the program. The State has also submitted a statement dated

April 24, 1992, by the Attorney General certifying, with appropriate citations to the statutes and regulations that the State will have adequate legal authority to administer the general permits program as required by 40 CFR 123.23(c). In addition, the State submitted a program description supplementing the original application for the NPDES program authority to administer the general permits program, including the authority to perform each of the activities set forth in 40 CFR 123.44. The State has also submitted an Amendment to the Memorandum of Agreement between the State of Nevada DCNR and EPA, Region 9 specifying the procedures through which general permits will be issued and administered by the State. Based upon Nevada's program description and upon its experience in administering an approved NPDES program, EPA has concluded that the State will have the necessary procedures and resources to administer the general permits program.

III. Federal Register Notice of Approval of State NPDES Programs or Modifications

EPA must provide Federal Register notice of any action by the Agency approving or modifying a State NPDES program. The following table provides the public with an up-to-date list of the status of NPDES permitting authority throughout the country. Today's Federal Register notice is to announce the approval of Nevada's authority to issue general permits.

STATE NPDES PROGRAM STATUS

	Approved state NPDES permit program	Approved to regulate federal facilities	Approved state pretreatment program	Approved general permits program
Alabama	10/19/79	10/19/79	10/19/79	06/26/91
Arkansas	11/01/86	11/01/86	11/01/86	11/01/86
California	05/14/73	05/05/78	09/22/89	09/22/89
Colorado	03/27/75			03/04/83
Connecticut	09/26/73	01/09/89	06/03/81	03/10/92
Delaware	04/01/74			
Georgia	06/28/74	12/08/80	03/12/81	01/28/91
Hawaii	11/28/74	06/01/79	08/12/83	09/30/91
Illinois	10/23/77	09/20/79		01/04/84
Indiana	01/01/75	12/09/78		04/02/91
Iowa	08/10/78	08/10/78	06/03/81	08/04/92
Kansas	06/28/74	08/28/85		
Kentucky	09/30/83	09/30/83	09/30/83	09/30/83
Maryland	09/05/74	11/10/87	09/30/85	09/30/91
Michigan	10/17/73	12/09/78	06/07/83	
Minnesota	06/30/74	12/09/78	07/16/79	12/15/87
Mississippi	05/01/74	01/28/83	05/13/82	09/27/91
Missouri	10/30/74	06/26/79	06/03/81	12/12/85
Montana	06/10/74	06/23/81		04/29/83
Nebraska	06/12/74	11/02/79	09/07/84	07/20/89
Nevada	09/19/75	08/31/78		07/27/92
New Jersey	04/13/82	04/13/82	04/13/82	04/13/82
New York	10/28/75	06/13/80		
North Carolina	10/19/75	09/28/84	06/14/82	09/06/91
North Dakota	06/13/75	01/22/90		01/22/90
Ohio	03/11/74	01/28/83	07/27/83	

STATE NPDES PROGRAM STATUS—Continued

	Approved state NPDES permit program	Approved to regulate federal facilities	Approved state pretreatment program	Approved general permits program
Oregon.....	09/26/73	03/02/79	03/12/81	02/23/82
Pennsylvania.....	06/30/78	06/30/78		08/02/91
Rhode Island.....	09/17/84	09/17/84	09/17/84	09/17/84
South Carolina.....	06/10/75	09/26/80	04/09/82	
Tennessee.....	12/28/77	09/30/86	08/10/83	04/18/91
Utah.....	07/07/87	07/07/87	07/07/87	07/07/87
Vermont.....	03/11/74		03/16/82	
Virgin Islands.....	06/30/76			
Virginia.....	03/31/75	02/09/82	04/14/89	05/20/91
Washington.....	11/14/73		09/30/86	09/26/89
West Virginia.....	05/10/82	05/10/82	05/10/82	05/10/82
Wisconsin.....	02/04/74	11/26/79	12/24/80	12/19/86
Wyoming.....	01/30/75	05/18/81		09/24/91
Totals.....	39	34	27	31

Number of Fully Authorized Programs (Federal Facilities, Pretreatment, General Permits) = 22

IV. Review Under Executive Order 12291 and the Regulatory Flexibility Act

The Office of Management and Budget has exempted this rule from the review requirements of Executive Order 12291 pursuant to section 8(b) of that Order.

Under the Regulatory Flexibility Act, EPA is required to prepare a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. Pursuant to section 605(d) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), I certify that this State General Permits Program will not have a significant impact on a substantial number of small entities. Approval of the Nevada NPDES State General Permits Program establishes no new substantive requirements, nor does it alter the regulatory control over any industrial category. Approval of the Nevada NPDES State General Permits Program merely provides a simplified administrative process.

Dated: July 21, 1992.

Daniel W. McGovern,

Regional Administrator Region 9.

[FR Doc. 92-18935 Filed 8-7-92; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Maryland Port Administration and Premier Automotive Services, Inc.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may

submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200691.

Title: Maryland Port Administration and Premier Automotive Services, Inc., Marine Terminal Agreement.

Parties: The Maryland Port Administration ("MPA"), Premier Automotive Services, Inc. ("Premier").

Synopsis: The Agreement provides for Premier to rent from MPA 6.53 acres in Area 90 and approximately 16.19 acres in Areas 202 and 94 located at the Dundalk Marine Terminal. The term of the Agreement is for five years.

Agreement No.: 232-011184-005.

Title: Evergreen Marine Corporation (Taiwan) Ltd., Italia di Navigazione, S.p.A. and Compagnie Maritime Space Charter and Sailing Agreement.

Parties: Compagnie Generale Maritime ("CGM"), Evergreen Marine Corporation (Taiwan) Ltd., Italia di Navigazione S.p.A.

Synopsis: The proposed amendment will revise the Membership and Withdrawal provision of the Agreement to provide that CGM may withdraw from the Agreement upon ten days' written notice to the other parties, as long as such notice is not tendered before September 1, 1992.

Agreement No.: 203-011382.

Title: Agreement for Settlement and Release of Columbus Line Claims Relating to the Argentina/U.S. Atlantic Pool Agreement.

Parties: American Transport Lines, Inc., Hamburg Sudamerikanische Dampfschiffahrt Gesellschaft (Columbus Line).

Synopsis: The proposed Agreement would settle disputes between the parties over revenue pool accounting payments for the years 1990-1991 under pooling Agreement No. 212-010386 (the Argentina/U.S. Atlantic Coast Agreement).

Dated: August 4, 1992.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92-18824 Filed 8-7-92; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the Federal Register.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade

Commission and the Assistant Attorney General for the Antitrust Division of the

Department of Justice. Neither agency intends to take any action with respect

to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 072092 AND 073192

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Don Tyson, Arctic Alaska Fisheries Corporation, Arctic Alaska Fisheries Corporation	92-1227	07/20/92
Service Corporation International, John Farias, Jr., JHF/JFJ, Inc.	92-1228	07/20/92
Service Corporation International, John Henry Felix, JHF/JFJ, Inc.	92-1229	07/20/92
Francis L. Miller, Don Tyson, Tyson Foods, Inc.	92-1233	07/20/92
Cintas Corporation, David E. Maryatt, American Linen Supply Co. d/b/a Maryatt Industries	92-1112	07/22/92
Robert T. Shaw, NACOLAH Holding Corporation, NACOLAH Holding Corporation	92-1245	07/22/92
American Re Associates, L.P., Aetna Life and Casualty Company, American Re-Insurance Company	92-1127	07/23/92
Lubrizol Corporation (The), Mycogen Corporation, Mycogen Corporation	92-1161	07/23/92
Petrofina S.A., Hoechst Aktiengesellschaft, Hoechst Celanese Corporation	92-1183	07/23/92
W. Galen Weston, Maplehurst Group Inc., Maplehurst Group, Inc.	92-1193	07/23/92
Hoechst AG, Hoechst AG, Cape Industries	92-1207	07/23/92
Pan-American Life Insurance Company, Charlotte Liberty Mutual Insurance Company, Charlotte Liberty Mutual Insurance Company	92-1237	07/23/92
Allied-Signal Inc., Westinghouse Electric Corporation, Fortin, Inc., Fortin S.A., and Fortin Ltd.	92-0885	07/24/92
National Service Industries, Inc., H. David Abelow, Associated Textile Rental Services, Inc.	92-1219	07/24/92
Fred B. Anschutz Trust, Philip F. Anschutz, Block 175 Corporation	92-1239	07/24/92
Forest Oil Corporation, Transco Energy Company, Transco Exploration and Production Company	92-1248	07/24/92
Telecommunications, Inc., Southwest Cablevision, Ltd., Southwest Cablevision, Ltd.	92-1249	07/24/92
K-III Communications Corp., Harold and Marianne Mantell, husband and wife, Films for the Humanities, Inc.	92-1251	07/24/92
General Electric Company, Transco Energy Company, TXP Operating Company	92-1254	07/24/92
Hartstone Group PLC (The), Bain Venture Capital, Mutterperl Group, Ltd.	92-1255	07/24/92
Hartstone Group PLC (The), Tyler Capital Fund, L.P., Mutterperl Group, Ltd.	92-1256	07/24/92
Walter J. Brown, General Electric Company, Pegasus Broadcasting of Augusta, Georgia, Inc.	92-1105	07/27/92
Warburg, Pincus Capital Company, L.P., Marine Drilling Companies, Inc., Marine Drilling Companies, Inc.	92-1241	07/27/92
Peter Kiewit Sons, Inc., ME Holding Inc., ME Holding, Inc.	92-1208	07/28/92
GroupCare, Inc., MedCenters Health Care, Inc., MedCenters Health Care, Inc.	92-1025	07/29/92
GroupCare, Inc., Group Health Plan, Inc., Group Health Plan, Inc.	92-1027	07/29/92
Voting Trust/Hallmark Cards, Incorporated, Housatonic Cable Vision Company, Housatonic Cable Vision Company	92-1152	07/29/92
Homedco Group, Inc., BOC Group plc, Glasrock Home Health Care, Inc.	92-1181	07/29/92
Danka Business Systems PLC, Waller Brothers, Inc., Waller Brothers, Inc.	92-1258	07/29/92
Act III Cinemas, Inc., Cineplex Odeon Corporation, Plitt Theatres, Inc.	92-1102	07/30/92
SCI Systems, Inc., Tandem Computers Incorporated, Tandem Computers Incorporated	92-1118	07/30/92
Blue Cross and Blue Shield of Massachusetts, Inc., Bay State Health Care, Inc., Bay State Health Care, Inc.	92-1196	07/31/92
N-W Group, Inc., Herbert Skidmore, Glenayre Electronics, Inc.	92-1264	07/31/92
N-W Group, Inc., Arthur Skidmore, Glenayre Electronics, Inc.	92-1265	07/31/92
Brown-Forman Corporation, Fetzer Vineyards, Fetzer Vineyards	92-1269	07/31/92
Noel Group, Inc., Livio Borghese, Curtis Industries, Inc.	92-1271	07/31/92
Cascades Inc., Dennis Mehiel, The Fonda Group, Inc.	92-1275	07/31/92
Taihei Shokuhin Kogyo Kabushiki Kaisha, Eugene J. Long, Dove Canyon Country Club, Ltd.	92-1279	07/31/92
Northwestern Memorial Corporation, Carlyle Real Estate Limited Partnership—XV, Lasalle National Trust	92-1281	07/31/92
Thorn EMI plc, C. Howard Wilkins, Jr., Racord, Inc. and Norac, Inc.	92-1284	07/31/92
Continental Bank Corporation, Plastic Engineered Components, Inc., Plastic Engineered Components, Inc.	92-1290	07/31/92

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, room 303, Washington, DC 20580, (202) 326-3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 92-18891 Filed 8-7-92; 8:45 am]

BILLING CODE 6750-01-M

[File No. 901-3111]

Mobil Oil Corporation; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair

methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Virginia-based manufacturer and seller of plastic bags from making unsubstantiated degradability and environmental benefit claims.

DATES: Comments must be received on or before October 9, 1992.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT:

Michael Dershowitz, FTC/S-4002, Washington, DC 20580, (202) 326-3158.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to

cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Mobil Oil Corporation, a corporation, and it now appearing that Mobil Oil Corporation, hereinafter sometimes referred to as proposed respondent, is willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated.

It is Hereby Agreed by and between Mobil Oil Corporation, by its duly authorized officer and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Mobil Oil Corporation is a Delaware corporation with its office and principal place of business at 3225 Gallows Road, Fairfax, Virginia 22037-0001.

2. Proposed respondent admits all the jurisdictional facts set forth in the attached draft complaint.

3. Proposed respondent waives: (a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) All claims under the Equal Access to Justice Act.

4. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the attached draft complaint, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the attached draft complaint, or that the facts as alleged in the attached draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or

set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the complaint and the order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Definition

For purposes of this Order, the following definition shall apply: "Mobile plastic bag" means any plastic grocery bag, or any plastic "disposer" bag, including but not limited to trash bags, lawn bags, and kitchen bags, that is offered for sale, sold, or distributed to the public by respondent, its successors and assigns, under the "Hefty," "Kordite," or "Baggies" brand name or any other brand name of respondent, its successors and assigns; and also means any such plastic bag sold or distributed to the public by third parties under private labeling agreements with respondent, its successors and assigns.

1.

A. *It is Ordered* That respondent Mobil Oil Corporation, a corporation, its successors and assigns, and its officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, offering for sale, sale, or distribution of any Mobil plastic bag, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, by words, depictions, or symbols:

(1) That any such plastic bag is "degradable," "biodegradable," or "photodegradable"; or,

(2) Through the use of "degradable," "biodegradable," "photodegradable," or any other substantially similar term or expression, that the degradability of any such plastic bag offers any environmental benefits when disposed of as trash in a sanitary landfill,

unless at the time of making such representation, respondent possesses and relies upon a reasonable basis for such representation, consisting of competent and reliable scientific evidence that substantiates such representation. To the extent such evidence of a reasonable basis consists of scientific or professional tests, analyses, research, studies, or any other evidence based on expertise of professionals in the relevant area, such evidence shall be "competent and reliable" only if those tests, analyses, research, studies, or other evidence are conducted and evaluated in an objective manner by persons qualified to do so, and using procedures generally accepted in the profession to yield accurate and reliable results.

B. *Provided*, However, respondent will not be in violation of this Order, in connection with the advertising, labeling, offering for sale, sale, or distribution of plastic grocery bags, if it prints a diamond-shaped symbol on such bags in compliance with Florida state law, and/or truthfully states that such bag "Complies with Florida law."

C. *Provided*, Further, respondent will not be in violation of this Order, in connection with the advertising, labeling, offering for sale, sale, or distribution of plastic bags, if it truthfully represents that its plastic bags are designed to degrade or break down, and become part of usable compost, along with the bag's contents, when disposed of in programs that collect yard or other waste for composting (that is, the accelerated breakdown of waste into soil-conditioning material), provided that the labeling of such bags and any advertising referring to the degradability of such bags discloses clearly, prominently, and in close proximity to such representation:

(1)(a) That such bags are not designed to degrade in landfills, or

(1)(b) In those states in which composting facilities are required for yard waste, that composting bags are only designed to degrade in such composting facilities; and further discloses

(2)(a) That yard waste composting programs may not be available in the consumer's area, or

(2)(b) The approximate percentage of the U.S. population having access to yard waste composting programs.

For purposes of this provision, a disclosure elsewhere on the product package shall be deemed to be "in close proximity" to such representation if there is a clear and conspicuous cross-reference to the disclosure. The use of an asterisk or other symbol shall not constitute a clear and conspicuous cross-reference. A cross-reference shall be deemed clear and conspicuous if it is of sufficient prominence to be readily noticeable and readable by the prospective purchaser when examining the package. If such representation appears in more than one place on a package, it shall be sufficient if the above-required disclosures appear only on the principal display panel of the package, as "principal display panel" is defined in the Fair Packaging and Labeling Act, 15 U.S.C. 1459(f)(1988).

If the advertising and labeling of respondent's plastic bags otherwise complies with subpart A of part I of this Order, respondent will not be in violation of this Order if it does not make the disclosures in this proviso (subpart C).

II.

It is Further ordered That respondent Mobil Oil Corporation, a corporation, its successors and assigns, and its officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising or labeling of any Mobil plastic bag, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from using the terms "safe for the environment," "no harm to the environment," "no injury to the environment," "no risk to the environment," "friendly to the environment," or any rearrangement of such terms, e.g., "environmentally safe," "environmentally harmless," "environmentally risk-free" or "environmentally friendly," unless: (1) respondent discloses clearly, prominently, and in close proximity thereto with reasonable specificity what is meant by such term, and (2) at the time of making such representation, respondent possesses and relies upon a reasonable basis, consisting of competent and reliable scientific evidence that substantiates such representation. To the extent such evidence of a reasonable basis consists of scientific or professional tests, analyses, research, studies, or any other evidence based on expertise of professionals in the relevant area, such evidence shall be "competent and reliable" only if those tests, analyses, research, studies, or other evidence are

conducted and evaluated in an objective manner by persons qualified to do so, and using procedures generally accepted in the profession to yield accurate and reliable results. For purposes of this provision, a disclosure elsewhere on the product package shall be deemed to be "in close proximity" to such terms if there is a clear and conspicuous cross-reference to the disclosure. The use of an asterisk or other symbol shall not constitute a clear and conspicuous cross-reference. A cross-reference shall be deemed clear and conspicuous if it is of sufficient prominence to be readily noticeable and readable by the prospective purchaser when examining the package.

III.

Nothing in this Order shall prevent respondent from using any of the terms cited in Parts I and II, or similar terms or expressions, if necessary to comply with any federal rule, regulation, or law governing the use of such terms in advertising or labeling.

IV.

It is Further ordered That for three (3) years from the date that the representations to which they pertain are last disseminated, respondent shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials relied upon to substantiate any representation covered by this Order; and

B. All test reports, studies, surveys, or other materials in its possession or control that contradict, qualify, or call into question such representation or the basis upon which respondent relied for such representation.

V.

It is Further ordered That respondent shall distribute a copy of this Order within sixty (60) days after service of this Order upon it to each of its operating divisions and to each of its officers, agents, representatives, or employees engaged in the preparation of labeling and advertising and placement of newspaper, periodical, broadcast, and cable advertisements covered by this Order.

VI.

It is Further ordered That respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation such as a dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in

the corporation which may affect compliance objections under this Order.

VII.

It is Further ordered That respondent shall, within sixty (60) days after service of this Order upon it, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondent Mobil Oil Corporation.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter concerns the package labeling of "Hefty Degradable" plastic bags and plastic grocery store bags. The Commission's complaint charges that the respondent's labeling contained unsubstantiated representations concerning the bags' alleged degradability and the environmental benefits that could be obtained when they were disposed of as trash. The complaint alleges that the respondent represented that its products offer a significant environmental benefit when consumers dispose of them as trash, and that they will completely break down, decompose, and return to nature in a reasonably short period of time after consumers dispose of them as trash.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent the respondent from engaging in similar acts and practices in the future.

Part I of the proposed order requires the respondent to cease representing that any of its plastic trash or grocery bags, or plastic bags it manufactures and sells to third parties for further sale or distribution to the public, are "degradable," "photodegradable," or "biodegradable," or more specifically, through the use of such terms or substantially similar terms, that the degradability of such plastic bags offers any environmental benefits when disposed of as trash in a sanitary landfill, unless the respondent has a

reasonable basis for such representations at the time they are made.

Part I also contains a proviso that allows the respondent to advertise and label plastic grocery store bags with a diamond-shaped symbol, and/or the statement, "Complies with Florida law," without violating Part I. Under Florida law, all plastic shopping bags must meet certain Florida standards for photodegradation, or breaking down when exposed to sunlight. Florida requires that such bags be printed with a diamond-shaped symbol indicating that the bags comply with Florida's standards.

Part I contains an additional proviso allowing the respondent to advertise and label plastic products as "compostable" or "degradable" without violating Part I of the proposed order. The respondent may use the terms in labeling, and in advertising that refers to the bags' "degradability," if the bags will in fact degrade or break down, along with leaf and grass yard waste, into usable compost (soil-conditioning material) in yard waste composting programs. In addition, to avoid possible confusion about the benefit of a compostable product degrading in sanitary landfills, the proviso also requires the respondent to disclose clearly, prominently, and in close proximity to such claims that the bags are not designed to degrade in landfills. In those states in which composting facilities are required for yard waste, the respondent may alternatively disclose that its bags are only designed to degrade in yard waste composting facilities. Furthermore, the respondent must also disclose either that yard waste composting programs may not be available in the consumer's area, or the approximate percentage of the U.S. population having access to such programs.

Part II of the proposed order provides that if the respondent uses in advertising or labeling such terms as "Safe for the Environment" or "Environmentally Friendly," or rearrangements of those terms or certain similar terms, it must have a reasonable basis consisting of competent and reliable scientific evidence that substantiates its representations. Further, to ensure compliance with this provision, the order requires the respondent to clearly disclose, with reasonable specificity, what it means by such terms.

Part III of the proposed order allows the respondent to use the terms cited in Parts I and II, or substantially similar terms, and not be in violation of the proposed order, if it is necessary for the respondent to comply with any federal

rule, regulation, or law governing the use of such terms in advertising or labeling.

The proposed order also requires the respondent to maintain materials relied upon to substantiate claims covered by the order, to distribute copies of the order to certain company officials and employees, to notify the Commission of any changes in corporate structure that might affect compliance with the order, and to file one or more reports detailing compliance with the order.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

Concurring Statement of Commissioner Deborah K. Owen, in Which Commissioner Mary L. Azcuenaga and Commissioner Roscoe B. Starek, III Join

The complaint in this case alleges that Mobil Oil Corporation ("Mobil") made certain unsubstantiated environmental claims about its plastic bags. The focus is on claims of degradability. Paragraph Four of the complaint lists certain statements taken from package labeling and from grocery bag labeling. Paragraph Five of the complaint alleges that through these statements, and others, Mobil Oil "represented, directly or by implication" two claims concerning the environmental benefits of its bags:

- a. Compared to other plastic bags, respondent's plastic bags offer a significant environmental benefit when consumers dispose of them as trash; and
2. Respondent's plastic bags will completely break down, decompose, and return to nature in a reasonably short period of time after consumers dispose of them as trash.

These claims are subsequently alleged in Paragraphs Six and Seven to be unsubstantiated.

Paragraph Four of the complaint contains one statement taken from Mobil's grocery bag labels that clearly relates to the issue of degradability: "degrades in sunlight." It also contains other statements that do not directly relate to the issue: "non-toxic when incinerated," "recyclable," and "no ground water contamination." Including the entire label in the complaint is useful for purposes of demonstrating the context in which the degradability claims were made. However, I would not want my vote in favor of this case to be construed as a determination, one way or the other, as to the latter claims. Based on the evidence presented in this

case, I do not understand the Commission's action there to preclude truthful claims relating to toxicity, ground water contamination, or recyclability, or to necessarily require, with respect to such claims, substantiation for both of the presentations in Paragraph Five. I would prefer that complaints distinguish more clearly between statements that are the basis of Commission action, and contextual material.

[FR Doc. 92-18892 Filed 8-7-92; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

[Announcement Number 261]

HIV-Related Tuberculosis Preventive Therapy Regimen (PTR) Demonstration Cooperative Agreements

Introduction

The Centers for Disease Control (CDC), the Nation's prevention agency, announces the availability of Fiscal Year 1992 funds for a cooperative agreement program for tuberculosis (TB) and human immunodeficiency virus (HIV) preventive therapy regimen (PTR) demonstration projects.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of HIV Infection and Immunization and Infectious Diseases. (For ordering a copy of *Healthy People 2000*, see the section *Where to obtain Additional Information*).

Authority

This program is authorized under sections 301(a) and 317(k) of the Public Health Service Act, (42 U.S.C. 241(a) and 247b(k)), as amended. Applicable program regulations are found in 42 CFR 51b, subpart A, which contains general provisions relating to this program.

Eligible Applicants

Eligible applicants include nonprofit and for-profit organizations. Thus, universities, colleges, research institutions, hospitals, other public and private organizations, state and local health departments or their bona fide agents or instrumentalities, alcohol and

substance abuse agencies, and small, minority- or women-owned businesses are eligible for these cooperative agreements. Applicants must be able to locate, monitor and evaluate a minimum of 75 dually-infected (TB/HIV) persons per year who can be administered the appropriate rifampin/pyrazinamide TB preventive therapy according to a prescribed regimen to be provided by CDC. A copy of the prescribed regimen will be included in the application kit.

Availability of Funds

Approximately \$1,200,000 is available in Fiscal Year 1992 to fund three to five awards. It is expected that the average award will be \$250,000, ranging from \$200,000 to \$450,000. Awards are expected to begin on or about September 28, 1992, for a 12-month budget period within a project period of up to four years. Funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Purpose

The purpose of this program is to improve preventive treatment regimens for HIV-related *M. tuberculosis* through demonstration projects and applied research. Applied research, as used in the context of this announcement, means the process of the development and evaluation of practical operational approaches and solutions to HIV-related TB problems and the evaluation of new technology (e.g., new drugs, new drug regimens, new methods of testing drug feasibility, and applicability.)

Specific objectives of this project are to:

- A. Determine the efficacy of a rifampin/pyrazinamide drug regimen (as prescribed by CDC) in preventing the development of TB in HIV-infected persons at risk of developing TB.
- B. Describe the host factors that affect the efficacy of TB preventive therapy.
- C. Evaluate the acceptability and toxicity of the drug regimen in the prevention of TB.

National Goals

The ultimate goal of TB prevention and control efforts is disease elimination (a case rate of less than 0.1 per 100,000 population) by the year 2010, with an interim target goal of no more than 3.5 cases per 100,000 population by the year 2000.

The Healthy People 2000 national goals relating to TB and HIV infection are:

- A. Assess the impact of HIV infection on TB morbidity and mortality.

- B. Develop more effective tools for the diagnosis of TB infection and disease in persons with HIV infection.

- C. Determine optimal drug regimens for the treatment of TB in persons with HIV infection.

- D. Develop optimal TB preventive therapy regimens for dually-infected (TB/HIV) persons.

- E. Prevent TB disease among dually-infected (TB/HIV) persons.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for conducting activities under A., and CDC shall be responsible for conducting activities under B.

A. Recipient Activities

1. Develop and implement strategies that are applicable to TB/HIV-infected persons in the United States including: (a) methods and strategies to successfully identify, enroll, and administer appropriate preventive drug therapy to HIV-infected persons also infected with *M. tuberculosis*; and (b) methods to actively monitor and insure compliance with drug therapy, assess toxicity, and appropriately evaluate patients for up to 2 years after completion of preventive therapy.
2. Identify and enroll a minimum of 75 dually-infected (TB/HIV) persons into the prescribed preventive therapy regimen.
3. Implement specified follow-up procedures to monitor, for both efficacy and toxicity, in dually-infected (TB/HIV) persons receiving the prescribed preventive therapy.
4. Develop and implement methods for the follow-up of dually-infected (TB/HIV) individuals identified but not receiving preventive therapy.
5. Develop and implement an evaluation plan that measures the effectiveness of the trial regimen employed.
6. Compile and disseminate findings.

B. CDC Activities

1. Provide consultation and technical assistance in planning, developing, operating, and evaluating strategies.
2. Provide and explain, to each of the recipients, the preventive therapy regimen designated for this study. A copy of the prescribed regimen is included in the application kit.
3. Provide up-to-date scientific information and coordinate the exchange of information among recipients.
4. Assist in data management, analysis, and the evaluation of programmatic activities.

5. Assist recipients in collaborating with state and local health departments and other PHS-supported tuberculosis and HIV/AIDS projects.

6. Assist in the preparation and publication of findings.

Evaluation Criteria

Each application will be reviewed and evaluated individually according to the following criteria (100 total points maximum):

- A. The ability of the applicant to determine the extent of TB and HIV infection in their area to include: (1) The number of TB cases; (2) the number of AIDS cases; (3) the number of persons with TB and AIDS/HIV infection; (4) the estimated prevalence of HIV seropositivity in various population groups; and (5) the realistic estimated prevalence of tuberculin reactivity among AIDS risk groups. (10 points)

- B. The ability of the applicant to satisfactorily identify, using epidemiologic information, the number of dually infected (TB/HIV) persons and to have realistic expectations as to the numbers of persons (must have a minimum of 75) that will be enrolled into the TB preventive therapy regimen. (10 points)

- C. The ability of the applicant to perform active follow-up procedures on all participants who receive preventive therapy (defined as persons who are currently receiving drugs or those who have completed the drug therapy portion of their treatment) including methods to deal with noncompliant patients; and the extent to which qualified and experienced personnel are available to carry out the proposed follow-up activities. (30 points)

- D. The extent to which the applicant's short- and long-term objectives are realistic, measurable, time-phased, and consistent with the purpose of the program. (15 points)

- E. The overall potential effectiveness of the applicant's proposed activities and methods for meeting the stated objectives. (20 points)

- F. The adequacy of the proposed plans to evaluate progress in implementing methods and achieving objectives. (15 points)

In addition, consideration will be given to the extent to which the budget request is clearly explained, adequately justified, reasonable, and consistent with the intended use of cooperative agreement funds.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Numbers are 93.947, Tuberculosis Demonstration, Research, Public and

Professional Education; and 93.118, Acquired Immunodeficiency Syndrome (AIDS) activities.

Other Requirements

Confidentiality

Applicants must have in place systems to ensure the confidentiality of all patient records.

Pre- and Post-test Counseling and Partner Notification

Recipients are required to provide HIV antibody testing to determine a person's HIV infection status; therefore, they must comply with state laws and regulations and CDC guidelines regarding pre- and post-test counseling and partner notification of HIV-seropositive patients, a copy of which will be included in the application kit. Recipients must also comply with state and local health department requirements relating to specific reportable diseases or conditions. Recipients must provide referrals for HIV diagnosis and treatment.

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Human Subjects

The applicant must comply with the Department of Health and Human Services regulations (45 CFR part 46) regarding the protection of human subjects. Assurances must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

HIV/AIDS Requirements

Recipients must comply with the document entitled "Content of AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions" (June 1992), a copy of which is included in the application kit. In complying with the requirements for a program review panel, recipients are encouraged to use an existing program review panel such as the one created by the state health department's HIV/AIDS prevention program. If the recipient forms its own program review panel, at least one member must be an employee (or a designated representative) of a government health department

consistent with the Content guidelines. The names of the review panel members must be listed on the Assurance of Compliance form CDC 0.113, which also will be included in the application kit. The recipient must submit the program review panel's report that indicates all materials have been reviewed and approved.

Application and Submission Deadline

The original and two copies of the application (Form PHS-5161-1) must be submitted to Elizabeth M. Taylor, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mailstop E-14, Atlanta, GA 30305 on or before September 11, 1992.

A. Deadline

Applications shall be considered as meeting the deadline if they are:

1. Received on or before the deadline date, or
2. Sent on or before the deadline date and received in time for submission to the independent review committee. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing.)

B. Late Applications

Applications that do not meet the criteria in A.1. or A.2. are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Additional Information

A complete program description and information on application procedures, an application package, and business management technical assistance may be obtained from Lynn Mercer, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Atlanta, GA 30305, (404) 842-6814.

Programmatic technical assistance may be obtained from Lawrence J. Geiter, Division of Tuberculosis Control, National Center for Prevention Services, Centers for Disease Control, Atlanta, GA 30333, (404) 639-2530.

Please refer to Announcement 261, HIV-Related Tuberculosis Preventive Therapy Regimen (PRT) Demonstration Cooperative Agreements, when requesting information or submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report, Stock No. 017-001-00473-1) referenced in the introduction of this document through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (Telephone (202) 783-3238).

Dated: August 4, 1992.

Robert L. Foster,

Acting Associate Director for Management and Operations, Centers for Disease Control.
[FR Doc. 92-18857 Filed 8-7-92; 8:45 am]

BILLING CODE 4150-18-M

Food and Drug Administration

[Docket No. 92C-0293]

The Cosmetic, Toiletry, and Fragrance Association; Filing of Color Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Cosmetic, Toiletry, and Fragrance Association (CTFA) has filed a petition proposing that the color additive regulations be amended to provide for the safe use of FD&C Yellow No. 5 and its lakes for coloring drugs and cosmetics intended for use in the area of the eye.

FOR FURTHER INFORMATION CONTACT: Wesley Long, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9515.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 706(d)(1) (21 U.S.C. 376(d)(1))), notice is given that a petition (CAP 6C0205) has been filed by CTFA, 1101 17th St. NW., Suite 300, Washington, DC 20036. The petition proposes to amend the color additive regulations in §§ 74.1705 *FD&C Yellow No. 5* and 74.2705 *FD&C Yellow No. 5* (21 CFR 74.1705 and 74.2705) to provide for the safe use of FD&C Yellow No. 5 and its lakes for coloring drugs and cosmetics intended for use in the area of the eye.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be

published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c).

Dated: August 4, 1992.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92-18854 Filed 8-7-92; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 92F-0285]

Mitsui Toatsu Chemicals, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a petition has been filed on behalf of Mitsui Toatsu Chemicals, Inc., proposing that the food additive regulations be amended to provide for the expanded safe use of bis(p-ethylbenzylidene) sorbitol as a clarifying agent for polypropylene articles intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9500.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 2B4330) has been filed on behalf of Mitsui Toatsu Chemicals, Inc., c/o 1001 G St. NW., Suite 500 West, Washington, DC 20001. The petition proposes to amend the food additive regulations in § 178.3295 *Clarifying agents for polymers* (21 CFR 178.3295) to provide for the expanded safe use of bis(p-ethylbenzylidene) sorbitol as a clarifying agent for polypropylene articles intended for use in contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c).

Dated: August 4, 1992.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92-18855 Filed 8-7-92; 8:45 am]

BILLING CODE 4160-01-F

Request for Nominations for Members on Public Advisory Committees; Science Board to the Food and Drug Administration

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for 10 members to serve on the Science Board (the board) to the Food and Drug Administration in the Office of the Commissioner. Elsewhere in this issue of the Federal Register, FDA is publishing a final rule announcing the establishment of this committee.

DATES: Nominations should be received on or before September 9, 1992.

ADDRESSES: All nominations for membership except for the consumer-nominated members should be sent to Susan L. Crandall (address below). All nominations for the consumer-nominated members should be sent to Phyllis Weller (address below).

FOR FURTHER INFORMATION CONTACT:

Regarding all nominations for membership, except for the consumer-nominated members: Susan L. Crandall, Office of the Commissioner (HF-33), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5839.

Regarding all nominations for the consumer-nominated members: Phyllis Weller, Office of Consumer Affairs (HFE-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5006.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations for 10 members to serve on the board. The function of the board is to provide advice primarily to the agency's Senior Science Advisor and, as needed, the Commissioner and other appropriate officials on specific complex and technical issues as well as emerging issues within the scientific community in academia and industry. Additionally, the board will provide advice to the agency on keeping pace with technical and scientific evolutions in the fields of regulatory science, on formulating an appropriate research agenda, and on upgrading its scientific and research facilities to keep pace with these changes. It will also provide the means for critical review of the agency

sponsored intramural and extramural scientific research programs.

FDA is notifying the public that the agency's Senior Science Advisor, Elkan Blout, has prepared a list of prospective candidates from academia and industry. These individuals will be considered along with other nominations submitted to the agency in response to this Federal Register notice.

Persons nominated for membership shall be knowledgeable in the fields of chemistry, pharmacology, toxicology, clinical research, and other scientific disciplines. Members shall represent academia and industry. The committee may include one technically qualified member who is identified with consumer interests and is recommended by either a consortium of consumer-oriented organizations or other interested persons. Members shall be invited to serve for overlapping 4-year terms except for the first members appointed: Three shall serve for a term of 2 years, three for a term of 3 years, and four for a term of 4 years as designated at the time of appointment.

Interested persons may nominate one or more qualified persons for membership on the advisory committee. Nominations shall state that the nominee is willing to serve as a member of the advisory committee and appears to have no conflict of interest that would preclude committee membership. Potential candidates will be asked by FDA to provide detailed information concerning such matters as financial holdings, consultancies, and research grants or contracts to permit evaluation of possible sources of conflict of interest.

Selection of a representative of consumer interests is conducted through procedures that include use of a consortium of consumer organizations which has the responsibility for screening, interviewing, and recommending candidates for the agency's selection. Candidates, like all other candidates for membership on the committee, should possess appropriate qualifications to understand and contribute to the committee's work.

FDA has special interest in assuring that women, minority groups, and the physically handicapped are adequately represented on advisory committees and therefore extends particular encouragement to nominations for appropriately qualified female, minority, or physically handicapped candidates.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. App. 2) and 21 CFR Part 14, relating to advisory committees.

Dated: August 3, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-18817 Filed 8-7-92; 8:45 am]

BILLING CODE 4160-01-F

National Institutes of Health

John E. Fogarty International Center for Advanced Study in the Health Sciences; Meeting of the Fogarty International Center Advisory Board

Pursuant to Public Law 92-463, notice is hereby given of the twenty-second meeting of the Fogarty International Center (FIC) Advisory Board, September 22, 1992, in the Lawton Chiles International House (Building 16), at the National Institutes of Health.

The meeting will be open to the public from 8:30 a.m. to 2:30 p.m. The morning agenda will include a report by the Director, FIC, a report on the meeting of the Advisory Committee to the NIH Director, a presentation on planning for future directions of the FIC, and a report on international collaboration in vaccine development.

The afternoon agenda will include a presentation by the Director, NIH.

In accordance with the provisions of secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Pub. L. 92-463, the meeting will be closed to the public from 2:30 p.m. to adjournment for the review of applications for International Research Fellowships, Senior International Fellowships, and Fogarty International Research Collaboration Awards.

Myra Halem, Committee Management Assistant, Fogarty International Center, Building 31, room B2C08, National Institutes of Health, Bethesda, Maryland 20892 (301-496-1491), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Coralie Farlee, Assistant Director for International Legislation and Advisory Activities, Fogarty International Center (Executive Secretary), Building 31, room B2C08, telephone 301-496-1491, will provide substantive program information.

Catalog of Federal Domestic Assistance Program No. 93.154, Special International Postdoctoral Research Program in Acquired Immunodeficiency Syndrome and No. 93.989, Senior International Awards Program.

Dated: July 30, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92-18883 Filed 8-7-92; 8:45 am]

BILLING CODE 4160-01-M

National Center for Research Resources; Meeting of the National Advisory Research Resources Council

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the National Advisory Research Resources Council (NARRC), National Center for Research Resources (NCRR), at the National Institutes of Health.

This meeting will be open to the public, as indicated below, during which time there will be discussions on administrative matters such as previous meeting minutes; the report of the Director, NCRR; and review of budget and legislative updates. Attendance by the public will be limited to space available.

In accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S. Code and sec. 10(d) of Public Law 92-463, the meeting will be closed to the public as listed below for the review, discussion and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Research Resources Council.

Date of Meeting: September 9-11, 1992.

Place of Meeting: National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

Open: September 9, 6:45 p.m. until recess, Planning and Agenda Subcommittee, Building 12A, room 4007. September 10, 9 a.m. until recess, Conference Room 6, Building 31C.

Closed: September 11, 8 a.m. until 10 a.m., Conference Room 6, Building 31C.

Open: September 11, 10 a.m. until adjournment, Conference Room 6, Building 31C.

Mr. James J. Doherty, Information Office, NCRR, Westwood Building, room 10A15, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-5545, will provide a summary of meeting and a roster of the Council members upon request. Dr. Judith L. Vaitukaitis, Deputy Director for Extramural Research Resources, NCRR, Building 12A, room 4011, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-6023, will furnish substantive program information upon request, and will receive any comments pertaining to this announcement.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, Laboratory Animal

Sciences and Primate Research; 93.333, Clinical Research; 93.337, Biomedical Research Support; 93.371, Biomedical Research Technology; 93.389, Research Centers in Minority Institutions; 93.198, Biological Models and Materials Research; 93.167, Research Facilities Improvement Program; National Institutes of Health.)

Dated: July 30, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92-18884 Filed 8-7-92; 8:45 am]

BILLING CODE 4160-01-M

National Heart, Lung, and Blood Institute; Meetings

Pursuant to Public Law 92-463, notice is hereby given of the meetings of the following Heart, Lung, and Blood Special Emphasis Panels.

The meeting will be open to the public to discuss administrative details relating to Special Emphasis Panel (SEP) business for approximately one half hour at the beginning of each meeting. Attendance by the public will be limited to space available. The meetings will be closed thereafter in accordance with the provisions set forth in sec. 552b(c)(4) and 552(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92-463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Office of Committee Management, National Heart, Lung, and Blood Institute, Westwood Building, room 7A15, National Institutes of Health, Bethesda, Maryland 20892, telephone 301-496-7548, will furnish summaries of the meetings and rosters of panel members. Substantive program information may be obtained from each Scientific Review Administrator whose telephone number is provided. Since it is necessary to schedule meetings well in advance, it is suggested that anyone planning to attend a meeting contact the Scientific Review Administrator to confirm the exact date, time and location.

Name of Panel: Institutional Short-Term Training for Minority Students (T35-M).

Scientific Review Administrator: Dr.

Dennis Lang, Telephone 301-496-8818.

Dates of Meeting: August 17, 1992.

Place of Meeting: Westwood Building, room 550 (Telephone Conference).

Time of Meeting: 9 a.m.

Name of Panel: Institutional Short-Term Training for Minority Students (T35-M).

Scientific Review Administrator: Dr. Dennis Lang, Telephone 301-496-8818.

Dates of Meeting: August 18, 1992.

Place of Meeting: Westwood Building, room 550 (Telephone Conference).

Time of Meeting: 9 a.m.

(Catalog of Federal Domestic Assistance Program Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institute of Health.)

Dated: July 30, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92-18881 Filed 8-7-92; 8:45 a.m.]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Meeting of the National Heart, Lung, and Blood Advisory Council

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the National Heart, Lung, and Blood Advisory Council, National Heart, Lung, and Blood Institute, October 22-23, 1992, National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, Maryland 20892.

The Council meeting will be open to the public on October 22 from 9 a.m. to 5 p.m. for discussion of program policies and issues. Attendance by the public is limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C., sec. 10(d) of Public Law 92-463, the Council meeting will be closed to the public on October 23 from approximately 8:30 a.m. to adjournment for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-4236, will provide a summary of the meeting and a roster of the Council members.

Dr. Ronald G. Geller, Executive Secretary, National Heart, Lung, and Blood Advisory Council, Westwood Building, room 7A-17, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-7416, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: July 30, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92-18885 Filed 8-7-92; 8:45 am]

BILLING CODE 4140-01-M

National Institute on Aging; Meeting of the National Advisory Council on Aging

Pursuant to Public Law 92-463, notice is hereby given of a teleconference meeting of the National Advisory Council on Aging, National Institute on Aging, September 17, 1992, to be held at the National Institutes of Health, Building 31, Conference Room 7, Bethesda, Maryland. This meeting will be open to the public on Thursday, September 17, from 1 p.m. until 2 p.m. for a status report by the Acting Director, NIA; for discussion of the NIA budget, program policies and issues, recent legislation, and other items of interest. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, the teleconference meeting of the Council will be closed to the public on September 17 from 2 p.m. to adjournment for the review, discussion and evaluation of grant applications.

The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. June McCann, Council Secretary for the National Institute on Aging, National Institutes of Health, Gateway Building, 7201 Wisconsin Avenue, Suite 2C218, Bethesda, Maryland 20892 (301/496-9322), will provide a summary of the

meeting and a roster of committee members upon request.

(Catalog of Federal Domestic Assistance Program No. 93.866, Aging Research, National Institutes of Health)

Dated: July 30, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92-18887 Filed 8-7-92; 8:45 am]

BILLING CODE 4140-01-M

National Institute on Aging (NIA), National Aeronautics and Space Administration (NASA); Sensory Motor Integration and Disintegration

Notice is hereby given of a meeting, "Sensory Motor Integration and Disintegration", this meeting is being co-sponsored by the National Institute on Aging and the National Aeronautics and Space Administration. It will be held on August 19 from 7 to 9:30 p.m. at the Hyatt Regency, Bethesda, on August 20 from 8:30 a.m. to 5:30 p.m. and on August 21 from 8 a.m. to 12 noon, at the National Institutes of Health, Building 31C, Conference Room 6, at 9000 Rockville Pike, Bethesda, Maryland 20892.

The objective is to explore certain areas of research in the neurosciences relevant to the missions and responsibilities of both agencies. More to the point, it is to identify research opportunities and needs in adaptive and pathogenetic mechanisms associated with sensorimotor and sensorisensory difficulties that are common to both aging populations and to humans exposed to low gravity environments. The Working Groups will recommend research strategies to NIA and NASA. These recommendations will be the bases for research initiatives for joint agency funding.

Attendance at the meeting is by invitation only.

Further information on the program may be obtained from: Dr. Robert Rabin, Lew Evans Foundation, c/o Lockheed Engineering and Sciences Company, (202) 863-5240, or to Dr. Andrew Monjan, NIA/NNA, Gateway Building Suite 3C307, 7201 Wisconsin Avenue, Bethesda, MD 20892; (301) 496-9350.

Dated: August 4, 1992.

Bernadine Healy,

Director, NIH.

[FR Doc. 92-18888 Filed 8-7-92; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Meeting; National Arthritis and Musculoskeletal and Skin Diseases Advisory Council

Pursuant to Public Law 92-463, notice is hereby given of a meeting of the National Arthritis and Musculoskeletal and Skin Diseases Advisory Council to provide advice to the National Institute of Arthritis and Musculoskeletal and Skin Diseases on September 10, 1992, Shannon Building, Wilson Hall, National Institutes of Health, Bethesda, Maryland.

The meeting will be open to the public September 10 from 8:30 a.m. to 9 a.m. to discuss administrative details relating to Council business and special reports. Attendance by the public will be limited to space available.

The meeting of the Advisory Council will be closed to the public on September 10 from 9 a.m. to adjournment at approximately 5 p.m. in accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, for the review, discussion and evaluation of individual grant applications. These deliberations could reveal confidential trade secrets or commercial property, such as patentable materials, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Further information concerning the Council meeting may be obtained from Dr. Michael Lockshin, Executive Secretary, National Arthritis and Musculoskeletal and Skin Diseases Advisory Council, NIAMS, Building 31, room 4C32, Bethesda, Maryland 20892, (301) 496-0802.

A summary of the meeting and roster of the members may be obtained from the Committee Management Office, NIAMS, Building 31, rm. 4C32, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-0803.

(Catalog of Federal Domestic Assistance Program No. 93.846, Arthritis, Bone and Skin Diseases, National Institutes of Health)

Dated: July 30, 1992.
Susan K. Feldman,
NIH Committee Management Officer.
[FR Doc. 92-18886 Filed 8-7-92; 8:45 am]
BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-92-3482]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.
ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESSES: Interested persons are invited to submit comment regarding these proposals. Comments should refer to the proposal by name and should be sent to: Jennifer Main, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notices list the following information:

- (1) The title of the information collection proposal;
- (2) The office of the agency to collect the information;

(3) The description of the need for the information and its proposed use;

(4) The agency form number, if applicable;

(5) What member of the public will be affected by the proposal;

(6) How frequently information submissions will be required;

(7) An estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response;

(8) Whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and

(9) The names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: July 29, 1992.

John T. Murphy,

Director, Information Resources, Management Policy and Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Direct Endorsement Underwriter/HUD Reviewer Analysis of Appraisal Report.

Office: Housing.

Description of the Need for the Information and its Proposed Use:

Form HUD-54114 is necessary to provide the reviewer with a consistent method of documenting the analysis and acceptability of the approval report. The information collected is used by HUD in monitoring the quality of the lenders analysis of the appraisal report, identify areas of weakness for future training, and to remove lenders that consistently exhibit careless underwriting and subsequently affect a potential risk to the Department.

Form Number: HUD-54114.

Respondents: Businesses or Other For-Profit.

Frequency of Submission: On Occasion.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Form HUD-54114	375,000		1		.05		18,750

Total Estimated Burden Hours: 18,750.
Status: New.

Contact: Roxanne Zimmerman, HUD,
(202) 708-2700; Dick Manual, HUD,

(202) 708-2700; Jennifer Main, OMB,
(202) 395-6880.

Dated: July 29, 1992.

Proposal: Comprehensive Improvement Assistance Program (CIAP): Project Implementation Schedule.

Office: Public and Indian Housing.

Description of the Need for the Information and its Proposed Use: The project Implementation Schedule assists Public Housing Agencies and Indian Housing Authorities (herein referred to as HAs) in planning the

implementation of their approved Comprehensive Improvement Assistance Program (CIAP). To expedite the modernization pipeline and reduce the time between fund approval by HUD and fund obligation (construction contract award) by HAs, HAs are required to prepare and submit a Project Implementation Schedule for each development

approved for CIAP funding in a fiscal year. The Project Implementation Schedule is also used by HUD Field offices as a monitoring tool.

Form Number: None.

Respondents: State or Local Governments and Non-Profit Institutions.

Frequency of Submission: On Occasion.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection.....	600		1.5		1		900

Total Estimated Burden Hours: 900.

Status: Reinstatement.

Contact: Pris P. Buckler, HUD, (202) 708-1840; Jennifer Main, OMB, (202) 395-6880.

Dated: July 29, 1992.

[FR Doc. 92-18838 Filed 8-7-92; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. N-92-3483]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.
ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Jennifer Main, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management

Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information:

- (1) The title of the information collection proposal;
- (2) The office of the agency to collect the information;
- (3) The description of the need for the information and its proposed use;
- (4) The agency form number, if applicable;
- (5) What members of the public will be affected by the proposal;
- (6) How frequently information submissions will be required;
- (7) An estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response;
- (8) Whether the proposal is new or an extension, rein-statement, or revision of an information collection requirement; and

(9) The names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: July 29, 1992.

John T. Murphy,

Director, Information Resources Management Policy and Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Indian Housing Self-Help Program-Application and Development Program Requirements (FR-2544).

Office: Public and Indian Housing.

Description of the Need for the Information and its Proposed Use: The purpose of this reporting requirement is to implement a self-help program which will permit participants in the Indian Housing Mutual Help Program to substantially construct their own homes. The information will also be used to select Indian Housing Authorities (IHAs) as an Indian Housing Self-Help component to the Mutual Help Program.

Form Number: None.

Respondents: Non-Profit Institutions.

Frequency of Submission: Annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Applications.....	10		1		30		300
Development Programs.....	6		1		75		450

Total Estimated Burden Hours: 750.

Status: Reinstatement.

Contact: Dominic Nessi, HUD, (202) 708-1015; Jennifer Main, OMB, (202) 395-6880.

Dated: July 29, 1992.

[FR Doc. 92-18839 Filed 8-7-92; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. N-92-3484]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Jennifer Main, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information:

- (1) The title of the information collection proposal;

(2) The office of the agency to collect the information;

(3) The description of the need for the information and its proposed use;

(4) The agency form number, if applicable;

(5) What members of the public will be affected by the proposal;

(6) How frequently information submissions will be required;

(7) An estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response;

(8) Whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and

(9) The names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: July 31, 1992.

Kay Weaver,

Acting Director, Information Resources, Management Policy and Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Hope for Homeownership of Single Family Homes (HOPE 3)—(FR-2968).

Office: Community Planning and Development.

Description of the Need for the Information and its Proposed Use: The information collection described is required to assist HUD in selecting applicants to be awarded funds for: (Planning Grants) to establish or increase their capacity to apply for and carry out a HOPE 3 program; and (Implementation Grants) to provide homeownership opportunities to low-income homeowners under a HOPE 3 program. Grantees will be required to submit program and property information to HUD in order to receive grant funds through the Cash and Management Information (C/MI) System.

Form Number: SF-424, HUD-40086, 40086-A, 40102-A, 40102-B, 40103, 40104 and 40105.

Respondents: State or Local Governments and Non-Profit Institutions.

Frequency of Submission: On Occasion and Annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information collection.....	700		1		27.86		19,500
Recordkeeping.....	350		1		72.33		25,314

Total Estimated Burden Hours: 44,814.
Status: Revision.

Contact: John Garrity, HUD, (202) 708-0324; Jennifer Main, OMB, (202) 395-6880.

Dated: July 31, 1992.

[FR Doc. 92-18840 Filed 8-7-92; 8:45 am]

BILLING CODE 4210-01-M

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. N-92-3485; FR-3312-N-01]

Announcement of Project Mortgage Auction Winner

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The Project Mortgage Auction is authorized by the National Affordable Housing Act. The Department conducted the first auction in April 1992. This notice complies with the statutory requirement of publication of the accepted bid.

FOR FURTHER INFORMATION CONTACT: Frank Malone, Director, Office of Multifamily Housing Preservation and Property Disposition, Department of Housing and Urban Development, 451 Seventh Street SW., room 6164, Washington, DC 20410; telephone (202) 708-3555, or (202) 708-4594 (TDD). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: Section 221 of the National Housing Act (12 U.S.C. 17151) (Act) authorizes the Secretary to insure eligible mortgages, and is designed to assist private industry in providing housing for low-

and moderate-income families and displaced families. Under conditions prescribed by subsection (g)(4)(A), certain mortgages insured under section 221 may be assigned, transferred, and delivered to the Secretary, in exchange for insurance benefits. Upon conveyance the Secretary is to issue debentures to the mortgagee, under terms provided in the section.

Subsection (g)(4)(C)(i) provides that in lieu of accepting assignment of the original credit instrument and the mortgage securing the credit instrument as described above, the Secretary shall arrange for the sale of the beneficial interests in the mortgage loan through an auction and sale. The auction would determine the lowest interest rate necessary to accomplish a sale of the beneficial interests in the original credit instrument and mortgage (see subparagraph (c)(ii)(I)).

Following an announcement of the auction to all HUD-approved mortgagees, and the advanced publication of mortgage descriptions, the Department conducted the first Project Mortgage Auction on April 21, 1992. As required by section 221(g)(4)(C)(ii)(IV) of the Act, by this notice the Secretary is publishing the accepted bids for the mortgages in this auction, as follows:

Ninety-three project mortgages in the auction were sold to one bidder, First Boston Mortgage Capital Corporation. The winning bid was 8.43 percent. Two additional mortgages were in default at closing, and will be assigned to HUD.

Authority: 12 U.S.C. 1715i; 42 U.S.C. 3535(d).

Dated: July 31, 1992.

Arthur J. Hill,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 92-18837 Filed 8-7-92; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-010-4380-12]

Wyoming; Motor Vehicle Use Restrictions

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of closure and restriction of motor vehicle use and requirements for permitting/entering Spirit Mountain Cave (also known as Frost Cave), in Park County, Wyoming.

SUMMARY: Notice is hereby given that effective immediately, Spirit Mountain Cave (Frost Cave) located on Cedar Mountain, west of Cody, in Park County, Wyoming, on public lands administered by the Bureau of Land Management (BLM), Worland District, Cody Resource Area is restricted to permitted entry only and the access trail off the Cedar Mountain Road is closed to motorized vehicle use to the mouth of the cave. This action is being taken for visitor safety and resource protection of a potential significant cave. Individuals wanting access to Spirit Mountain Cave for recreational pursuits must contact the BLM, Cody Resource Area for the necessary requirements, permit forms, and key for the entrance gate to the cave.

EFFECTIVE DATE: This closure will be in effect August 10, 1992 and will remain in effect until rescinded or modified by the authorized officer.

FOR FURTHER INFORMATION CONTACT: Bob Dieli, Outdoor Recreation Planner,

or Duane Whitmer, Area Manager, Cody Resource Area, P.O. Box 518, 1714 Stampede Avenue, (1002 Blackburn Avenue after late August 1992) Cody, Wyoming 82414, (307) 587-2216.

SUPPLEMENTARY INFORMATION: The Cody Resource Area is responsible for the management of Spirit Mountain Cave (Frost Cave) and other cave systems located throughout the Bighorn Basin, Wyoming. These cave resources are covered under the Cody Resource Management Plan, which was signed on November 8, 1990. All caves within the Worland District, Cody Resource Area are within the Worland Caves Special Recreation Management Area. Cave resources are protected under the Federal Cave Resources Protection Act of 1988; Archaeological Resources Protection Act of 1979, as amended; Native American Graves Protection and Repatriation Act of 1990; and the Federal Land Policy and Management Act of 1976.

Spirit Mountain Cave was discovered in the early 1900s and was developed into a "show cave" shortly thereafter. The commercial cave operations had interruptions over the years. For a period of time the cave was managed as a National Monument, however, that action was rescinded and the management of the cave was turned over to the city of Cody. In 1978 the city of Cody returned the management of the cave to the BLM. In 1984 a locked gate was installed at the mouth of the cave and it has been managed as a "wild cave." All evidence of the "show cave" features have been removed. Past authorized and unauthorized recreational use has threatened the integrity of the cave and the access trail (road) is steep and cannot be maintained for vehicle use. Authority for closure and restriction orders is provided under 43 CFR subpart 8341.2 (a and b), 8364.1, 8372.0-7, 8372.1-2. Violations of this closure are punishable by a fine not to exceed \$1,000 and/or imprisonment not to exceed 12 months.

Dated: July 30, 1992.

Darrell Barnes,

District Manager, Worland District.

[FR Doc. 92-18810 Filed 8-7-92; 8:45 am]

BILLING CODE 4310-22-M

[OR-943-4214-13; GP-355; OR-45339]

Conveyance of Public Land; Order Providing for Opening of Lands; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action informs the public of the conveyance of 40 acres of public land out of Federal ownership. This action will also open 53.35 acres of reconveyed lands to surface entry. The minerals are not in Federal ownership.

EFFECTIVE DATE: September 14, 1992.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-280-7171.

SUPPLEMENTARY INFORMATION:

1. Notice is hereby given that in an exchange of lands made pursuant to Section 206 of the Act of October 21, 1976, 43 U.S.C. 1716, a patent has been issued transferring 40 acres in Lane County, Oregon, from Federal to private ownership.

2. In the exchange, the following described lands have been reconveyed to the United States:

Willamette Meridian

Revested Oregon and California Railroad Grant Lands

T. 17 S., R. 3 E.,

Sec. 3, lot 4;

Sec. 9, lot 5.

The areas described aggregate 53.35 acres in Lane County.

3. At 8:30 a.m., on September 14, 1992, the above described lands will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 8:30 a.m., on September 14, 1992, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

Dated: July 30, 1992.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 92-18812 Filed 8-7-92; 8:45 am]

BILLING CODE 4310-33-M

[CO-070-92-7408-13; C-50854]

Exchange of Lands in Eagle, Moffat, Pitkin, and Routt Counties, CO

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of exchange of lands.

SUMMARY: Pursuant to sections 205, 206, 302(b) and 310 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716), the Bureau of Land Management, Glenwood Springs and Little Snake Resource Areas, has identified parcels of public and private

land as preliminarily suitable for exchange.

FOR FURTHER INFORMATION CONTACT: Additional information concerning this proposed exchange, including the planning documents and environmental assessment, is available for review in the Glenwood Springs Resource Area Office at 50629 Highway 6 and 24, P.O. Box 1009, Glenwood Springs, Colorado 81602 and the Little Snake Resource Area Office at 1280 Industrial Avenue, Craig, Colorado 81625.

For a period of 45 days from the date of first publication of this notice, interested parties may submit comments to the District Manager, Grand Junction District, Bureau of Land Management, 2815 H Road, Grand Junction, Colorado 81506. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this Notice of Realty Action will become the final determination of the Department of the Interior.

SUPPLEMENTARY INFORMATION: The following-described lands have been determined to be preliminarily suitable for exchange under sections 205, 206, 302(b) and 310 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Selected Public Land—Federal Surface Ownership

- T. 9 N., R. 89 W., 6th P.M.
 Sec. 20: Lots 22 and 24
 Sec. 21: Lot 13
 Sec. 29: Lots 1, 2, 5, and 7
 Sec. 30: Lots 7, 9, 11, and 12
 T. 9 N., R. 90 W., 6th P.M.
 Sec. 18: Lots 5, 6, 11, and 12
 Sec. 29: Lot 16
 Sec. 32: Lots 1-3, 6-8, and 10
 T. 8 N., R. 91 W., 6th P.M.
 Sec. 1: Lot 4, SW $\frac{1}{4}$ NW $\frac{1}{4}$
 Sec. 2: Lots 1-4, S $\frac{1}{2}$ N $\frac{1}{2}$, N $\frac{1}{2}$ SE $\frac{1}{4}$
 Sec. 3: Lot 1
 T. 9 N., R. 91 W., 6th P.M.
 Sec. 5: Lots 7-10, 15-18
 Sec. 28: Lots 11-14
 Sec. 34: Lots 1-10, 15, and 16
 Sec. 35: Lots 3, 6, 12, and 13
 T. 8 N., R. 93 W., 6th P.M.
 Sec. 5: NW $\frac{1}{4}$ SW $\frac{1}{4}$
 Sec. 6: Lots 3, 4, and 6
 T. 8 N., R. 94 W., 6th P.M.
 Sec. 1: Lot 13, W $\frac{1}{2}$ SW $\frac{1}{4}$
 Sec. 2: Lots 1, 8, 15 and 16
 Sec. 3: Lot 4
 Sec. 4: S $\frac{1}{2}$ SW $\frac{1}{4}$
 Sec. 5: Lots 12-15, S $\frac{1}{2}$
 Sec. 6: Lots 9, 13-17, NE $\frac{1}{4}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$
 Sec. 8: N $\frac{1}{2}$ NW $\frac{1}{4}$
 Sec. 11: NE $\frac{1}{4}$ NE $\frac{1}{4}$
 Sec. 12: NW $\frac{1}{4}$ NW $\frac{1}{4}$
 Sec. 18: All
 T. 9 N., R. 94 W., 6th P.M.
 Sec. 28: W $\frac{1}{2}$
 T. 8 N., R. 95 W., 6th P.M.
 Sec. 1: Lots 12 and 13, N $\frac{1}{2}$ SW $\frac{1}{4}$

- Sec. 2: SE $\frac{1}{4}$
 Sec. 5: SW $\frac{1}{4}$ SW $\frac{1}{4}$
 Sec. 8: N $\frac{1}{2}$
 Sec. 9: S $\frac{1}{2}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$
 Sec. 11: NE $\frac{1}{4}$
 Sec. 13: SW $\frac{1}{4}$ SW $\frac{1}{4}$
 Sec. 16: All
 Sec. 19: NE $\frac{1}{4}$ NE $\frac{1}{4}$
 Sec. 22: E $\frac{1}{2}$ SE $\frac{1}{4}$
 Sec. 23: NW $\frac{1}{4}$
 Sec. 27: E $\frac{1}{2}$ NE $\frac{1}{4}$
 T. 9 N., R. 96 W., 6th P.M.
 Sec. 16: Lot 28
 Sec. 31: Lot 5
 T. 8 N., R. 97 W., 6th P.M.
 Sec. 11: N $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ NW $\frac{1}{4}$ S
 E $\frac{1}{2}$ NE $\frac{1}{4}$
 T. 4 S., R. 83 W., 6th P.M.
 Sec. 31: NE $\frac{1}{4}$ NE $\frac{1}{4}$
 Sec. 32: NW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$
 T. 9 S., R. 85 W., 6th P.M.
 Sec. 7: Lots 16 and 17
 T. 9 S., R. 86 W., 6th P.M.
 Sec. 14: Lots 2, 4, and 5
 Sec. 23: Lots 1 and 4
 Sec. 25: Lot 15
 Sec. 27: Lot 3
 Sec. 35: Lot 1

Selected Public Land—Federal Subsurface Ownership (Locatable Minerals Only)

- T. 8 N., R. 91 W., 6th P.M.
 Sec. 1: SW $\frac{1}{4}$
 Sec. 10: NE $\frac{1}{4}$
 T. 9 N., R. 91 W., 6th P.M.
 Sec. 21: Lots 14-16
 Sec. 23: Lots 3-6
 Sec. 27: Lots 1, 2, 7, and 8
 Sec. 28: Lot 1
 Sec. 29: Lots 7, 10-12, 14, and 15

Offered Private Land

- T. 1 N., R. 84 W., 6th P.M.
 Sec. 19: NE $\frac{1}{4}$ SE $\frac{1}{4}$
 Sec. 20: N $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$
 Sec. 21: SE $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$
 Sec. 22: SW $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, S $\frac{1}{2}$
 Sec. 23: SW $\frac{1}{4}$ SW $\frac{1}{4}$
 Sec. 28: That portion of the NW $\frac{1}{4}$ lying Northerly and Westerly of Colorado State Highway 131
 Sec. 27: W $\frac{1}{2}$; Those portions of the NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, and W $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ lying Northerly and Westerly of Colorado State Highway 131
 Sec. 28: E $\frac{1}{2}$, SW $\frac{1}{4}$
 Sec. 29: SE $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$
 Sec. 30: Lots 2-4, NE $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$
 Sec. 31: All
 Sec. 32: All
 Sec. 33: N $\frac{1}{2}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ W $\frac{1}{2}$
 Sec. 34: N $\frac{1}{2}$ NW $\frac{1}{2}$

Except a tract and right-of-way described in and conveyed by deed recorded in Book 231, Page 126, and in Book 256, Page 68, of the Routt County, Colorado records.

- T. 1 N., R. 85 W., 6th P.M.
 Sec. 25: SE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$

It is anticipated any adjustments to the selected public land to equalize values would be made in T. 4 S., R. 83 W., T. 9 S., R. 85 W., or T. 9 S., R. 86 W.

These 7,559.63 acres of federal surface ownership and 1,040.04 acres of federal subsurface ownership under the jurisdiction of the Bureau of Land Management have been identified as preliminarily suitable for exchange. The determination has been made in response to a Bureau-benefiting exchange proposal developed cooperatively between the Bureau and the Visintainer Sheep Company.

In the proposal, 4,284.12 acres of offered private land with public values would be exchanged for 8,599.67 acres of public land and interests in land which have been identified for disposal. The exchange proposal has been made to consolidate public and private land holdings, to resolve unauthorized occupancies on public lands, to provide legal access to federal lands, and to increase resource values and benefits available on public lands.

The values of the lands to be exchanged will be approximately equal. At the time of closing, the acreages will be adjusted or money will be used to equalize the exchange values.

Terms and Conditions

The following reservations would be made in patents issued for public land:

1. A reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).
2. A reservation to the United States of all mineral deposits of known value.
3. Reservations for public access on State Highway 13; Moffat County Roads 6, 8, 8A, 19, 21, 27, 71, 89, and 103; and Pitkin County Road 11, as existing.
4. Reservations to the United States of all significant archeological, historical, and paleontological resources.
5. Reservations for power line rights-of-way COC-28472, COC-36301, COC-50754, and COC-50859.
6. Reservations for irrigation ditch rights-of-way COC-0123780 and COC-50473.
7. Reservation for access road rights-of-way COC-44222, COC-50474, and COC-50744.
8. Reservations for telephone line rights-of-way COC-31204, and COC-50879.
9. Reservations for oil and gas pipeline rights-of-way COD-053725, COC-18423, COC-50077, and COC-52705.
10. A reservation for water pipeline right-of-way COC-50864.
11. Reservations for oil and gas leases COC-0123066, COC-17366, COC-29402, COC-30566, COC-36522, COC-36522A, COC-37303, COC-38125, COC-41964,

COC-42482, COC-43517, COC-44035, COC-45014, COC-45530, COC-45538, COC-46015, COC-46786, COC-47017, COC-47022, COC-47407, COC-48774, COC-48835, COC-48842, COC-48844, COC-48881, COC-50995, COC-51707, COC-51954, and COC-52014.

12. Reservations for all existing and valid land uses, including grazing leases, unless waived.

The public lands in T. 8 N., and T. 9 N., R. 89 W. to R. 97 W., described above were segregated from appropriation under the public land laws, including the general mining laws, under CO-50854, published in the *Federal Register* on March 11, 1991, as amended on June 7, 1991. The publication of this notice in the *Federal Register* will segregate the public lands in T. 4 S., R. 83 W., and T. 9 S., R. 85 W. and R. 86 W., described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws, except for disposal for exchange. As provided by the regulations of 43 CFR 2201.1(b), any subsequently tendered application, allowance of which is discretionary, shall not be considered as filed and shall be returned to the applicant. The segregative effect will terminate upon issuance of a patent, upon publication in the *Federal Register* of termination of the segregation, or 2 years from the date of this publication, whichever occurs first.

Dated: July 30, 1992.

Tim Hartzell,

District Manager, Grand Junction District.

[FR Doc. 92-18811 Filed 8-7-92; 8:45 am]

BILLING CODE 4310-JB-M

[ID-010-02-4212-24; IDI-25544]

Idaho; Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; IDI-25544; lease of public land for airport purposes in Owyhee County, Idaho.

SUMMARY: The following described public lands have been examined and found suitable for lease to the Idaho Bureau of Aeronautics for airport purposes under the Act of May 24, 1928, as amended:

Boise Meridian, Idaho

T. 16 S., R. 10 E.,

Sec. 18, lot 12, SW $\frac{1}{4}$ SE $\frac{1}{4}$ (within);

Sec. 19, lots 1, 5, 6, 7, 8, 11, NW $\frac{1}{4}$ NE $\frac{1}{4}$,

NW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ (within);

Sec. 30, lots 1, 2 (within).

Containing 96 acres.

DATES: The previously described lands are hereby segregated from appropriation under the public land laws including the mining laws for a period of one year from the date of publication of this notice in the *Federal Register* or until issuance of the lease, whichever occurs first.

On or before September 24, 1992, interested parties may submit comments to the District Manager, Bureau of Land Management, at the address shown below.

ADDRESSES: Copies of the Environmental Assessment and lease terms are available for public inspection upon request at the Bureau of Land Management, 2620 Kimberly Road, Twin Falls, Idaho 83301.

FOR FURTHER INFORMATION CONTACT: Mike Austin, at the above address or by telephone at (208) 736-2350.

SUPPLEMENTARY INFORMATION: This airport lease will authorize an existing airstrip and access road near Murphy Hot Springs, Idaho, to the Idaho Bureau of Aeronautics. The lease will be issued under the Act of May 24, 1928, as amended (49 U.S.C. app. 211-213). The proposed action is administrative and involves no changes in management nor any new environmental impacts.

Objections to this notice of realty action will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: July 29, 1992.

Barry C. Cushing,

Acting District Manager.

[FR Doc. 92-18815 Filed 8-7-92; 8:45 am]

BILLING CODE 4310-GG-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Bureau for Research and Development; University Center—Board for International Food and Agricultural Development and Economic Cooperation (BIFADEC)

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the twenty-ninth meeting of the Joint Committee on Agricultural Research and Development (JCARD) of the Board for International Food and Agricultural Development and Economic Cooperation (BIFADEC) to be held on August 19th and 20th, 1992.

The purpose of the meeting is to review the plan proposed to the Agency

for International Development (AID) for a Collaborative Research Support Program (CRSP) in Integrated Pest Management (IPM), and to consider the conclusions and recommendations of JCARD's Work Group on the subject. JCARD will develop recommendations to BIFADEC on the proposed plan. JCARD will also discuss other relevant agenda items, including a review of its role during the period of its existence, November 1992 to August, 1992. JCARD will discuss future plans for a Joint Committee on Research and Development (JCORD), endorsed by BIFADEC and AID to succeed JCARD.

JCARD will meet from 8:30 a.m. to 4:30 p.m. on August 19th and 20th, 1992. The Meeting will be held in the Diplomatic Conference Room of the State Plaza Hotel, across Virginia Avenue from the Department of State Building. The address of the State Plaza Hotel is 2117 E. Street NW., Washington, DC 20037.

Mr. William Frederick Johnson, BIFADEC Support Staff, is the designated A.I.D. Advisory Committee Representative at the meeting. It is suggested that those desiring further information write to him in care of the University Center, BIFADEC Support Staff, Washington, DC 20523-3801 or telephone him on (703) 816-2075.

Dated: July 30, 1992.

William Frederick Johnson,

A.I.D. Advisory Committee Representative.

[FR Doc. 92-18828 Filed 8-7-92; 8:45 am]

BILLING CODE 6116-01-M

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

- (1) The title of the form/collection;
- (2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;
- (3) How often the form must be filled out or the information is collected;
- (4) Who will be asked or required to respond, as well as a brief abstract;
- (5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and

(7) An indication as to whether section 3504(h) of Public Law 96-511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Ms. Lin Liu on (202) 395-7340 and to the Department of Justice's Clearance Officer, Mr. Don Wolfrey, on (202) 514-4115. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Don Wolfrey, DOJ Clearance Officer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 20530.

New Collection

(1) Insurance Related Criminal Referral Form.

(2) Criminal Division.

(3) On occasion.

(4) State or local governments. The information is used to encourage state insurance departments to refer significant criminal activity for Federal prosecution. It will enable the Department of Justice to ensure that all cases are being investigated appropriately, and that all related investigations are coordinated.

(5) 200 annual responses at 1.0 hour per response.

(6) 304 annual burden hours.

(7) Not applicable under 3504(h).

Public comment on these items is encouraged.

Dated: August 5, 1992.

Don Wolfrey,

Department Clearance Officer, Department of Justice.

[FR Doc. 92-18853 Filed 8-7-92; 8:45 am]

BILLING CODE 4410-14-M

[AAG/A Order No. 69-92]

Privacy Act of 1974 as Amended by Computer Matching and Privacy Protection Act of 1988

This notice is published in the Federal Register in accordance with the requirements of 5 U.S.C. 552a(e)(12). The Immigration and Naturalization Service

(INS), Department of Justice (the source agency), is participating in a computer matching program with the Massachusetts Department of Employment and Training (MA-DET) (the recipient agency). The matching program entitled "Systematic Alien Verification for Entitlements (SAVE)" will permit MA-DET to confirm the immigration status of alien applicants for, or recipients of, Federal benefits assistance (i.e., unemployment compensation insurance) as required by section 121 of the Immigration and Reform Control Act (IRCA) of 1986 (Public Law 99-603).

Notice of the matching program was originally published in the Federal Register on January 29, 1990 (55 FR2890); the program was effective on February 28, 1990. Duration was 18 months plus a one-year extension permitted by the Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988 (5 U.S.C. 552a(o)(2) (O) and (D)). The one-year extension will expire August 28, 1992. Thus, the following notice represents the approval of a new agreement by the Department of Justice Data Integrity Board to continue (on the effective date as indicated below) computer matching activities which will permit the recipient agency to confirm immigration status as required by Section 121 of IRCA.

Section 121(c) of IRCA amends section 1137 of the Social Security Act and requires agencies which administer the Federal benefit programs designated within IRCA to use the INS verification system to determine eligibility. Accordingly, through the use of user identification codes and passwords, authorized persons from MA-DET may electronically access the data base of an Immigration and Naturalization Service Privacy Act system of records entitled "Alien Status Verification Index, JUSTICE/INS-009." From its automated records system, MA-DET may enter electronically into the INS data base the alien registration number of the applicant or recipient. This action will initiate a search of the INS data base for a corresponding alien registration number. Where such number is located, MA-DET will receive electronically from the INS data base the following data upon which to determine eligibility: alien registration number; last name; first name; date of birth; country of birth; social security number (if available); date of entry; immigration status data; and employment eligibility data. In accordance with 5 U.S.C. 552a(p), MA-DET will provide the alien applicant with 30 days notice and an opportunity to contest any adverse finding before final action is taken

against that alien because of ineligible immigration status as established through the computer match.

Matching activity will be effective September 9, 1992, and will continue for a period of 18 months from the effective date unless extended for one year by the Data Integrity Board of the Department of Justice.

The matching agreement and the required report have been provided to the Office of Management and Budget and the Congress in accordance with 5 U.S.C. 552a(o)(2) (A) and (r). Inquiries may be addressed to Patricia E. Neely, Staff Assistant, Systems Policy Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 5031, CAB Building).

Dated: August 4, 1992.

Harry H. Flickinger

Assistant Attorney General, for Administration.

[FR Doc. 92-18844 Filed 8-7-92; 8:45 am]

BILLING CODE 4410-10-M

Immigration and Naturalization Service

[INS No. 1400BOS-92; AG Order No. 1610-92]

RIN 1115-AC 30

Designation of Bosnia-Herzegovina Under Temporary Protected Status Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: Under section 244A of the Immigration and Nationality Act, as amended (8 U.S.C. 1254a) ("the Act"), the Attorney General is authorized to grant Temporary Protected Status in the United States to eligible nationals of designated foreign states (or parts thereof) upon a finding that such foreign states are experiencing ongoing civil strife, environmental disaster, or certain other extraordinary and temporary conditions. Under section 304(b)(1) of the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, Public Law 102-232, 105 Stat. 1733, December 12, 1992 ("the Technical Amendments"), an alien having no nationality is also eligible for benefits under the Temporary Protected Status Program if he or she last habitually resided in a designated state. This notice by the Attorney General designates Bosnia-Herzegovina pursuant to section 244A(b) of the Act.

EFFECTIVE DATES: This designation is effective on August 10, 1992 and ends on August 10, 1993.

FOR FURTHER INFORMATION CONTACT:

Pearl B. Chang, Senior Immigration Examiner, Immigration and Naturalization Service, room 5250, 425 I Street, NW., Washington, DC 20536, telephone (202) 514-5014.

Notice of Designation of Bosnia-Herzegovina Under Temporary Protected Status Program

By the authority vested in me as the Attorney General under section 244A of the Immigration and Nationality Act, as amended (8 U.S.C. 1254a) (the "Act"), I find that (a) there exists an ongoing armed conflict in Bosnia-Herzegovina, and that a return of aliens who are nationals of Bosnia-Herzegovina, and aliens having no nationality who last habitually resided in Bosnia-Herzegovina, would pose a serious threat to their personal safety as a result of the armed conflict in that nation and (b) there exist extraordinary and temporary conditions in Bosnia-Herzegovina that prevent aliens that are nationals of Bosnia-Herzegovina, and aliens having no nationality who last habitually resided in Bosnia-Herzegovina, from returning to Bosnia-Herzegovina in safety and that permitting nationals of Bosnia-Herzegovina, and aliens having no nationality who last habitually resided in Bosnia-Herzegovina, to remain temporarily in the United States is not contrary to the national interest of the United States. Accordingly, it is ordered as follows:

(1) Bosnia-Herzegovina is designated under section 244A(b) of the act. Nationals of Bosnia-Herzegovina, and aliens having no nationality who last habitually resided in Bosnia-Herzegovina, and who have been continuously physically present and have continuously resided in the United States since August 10, 1992 may apply for Temporary Protected Status within the registration period which begins on August 10, 1992, ends on August 10, 1993.

(2) I estimate that there are no more than 5,000 nationals of Bosnia-Herzegovina and aliens having no nationality who last habitually resided in Bosnia-Herzegovina, who are currently in nonimmigrant or unlawful status, eligible for Temporary Protected Status.

(3) Except as specifically provided in this notice, applications for Temporary Protected Status by nationals of Bosnia-Herzegovina, and aliens having no nationality who last habitually resided

in Bosnia-Herzegovina, must be filed pursuant to the provisions of 8 CFR part 240. Aliens who wish to apply for Temporary Protected Status must file an Application for Temporary Protected Status, Form I-821, together with an Application for Employment Authorization, Form I-765, during the registration period, which begins on August 10, 1992 and ends on August 10, 1993.

(4) A fee of fifty dollars (\$50) will be charged for each Application for Temporary Protected Status, Form I-821, filed during the registration period.

(5) The fee prescribed in 8 CFR 103.7(b)(1) will be charged for each Application for Employment Authorization, Form I-765, filed by an alien requesting employment authorization. An alien who does not request employment authorization must file Form I-765 together with Form I-821 for information purposes, but in such cases Form I-765 will be without fee.

Dated: July 29, 1992.

William P. Barr,
Attorney General.

[FR Doc. 92-18831 Filed 8-7-92; 8:45 am]

BILLING CODE 4410-01-M

Office of the Attorney General

Certification of the Attorney General; Randolph County, GA

In accordance with section 6 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973d, I hereby certify that in my judgment the appointment of examiners is necessary to enforce the guarantees of the Fourteenth and Fifteenth Amendments of the Constitution of the United States in Randolph County, Georgia. This county is included within the scope of the determinations of the Attorney General and the Director of the Census made on August 6, 1965, under section 4(b) of the Voting Rights Act of 1965 and published in the Federal Register on August 7, 1965 (30 FR 9897).

Dated: August 6, 1992.

William P. Barr,
Attorney General of the United States.

[FR Doc. 92-19099 Filed 8-7-92; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Music

Advisory panel (Multi-Music Presenters and Festivals Section) to the National Council on the Arts will be held on August 24-27, 1992 from 9 a.m.-5:30 p.m. and August 28 from 9 a.m.-5 p.m. in room M-14 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on August 28 from 3 p.m.-5 p.m. the topic will be policy discussion.

The remaining portions of this meeting on August 24-27 from 9 a.m.-5:30 p.m. and August 28 from 9 a.m.-3 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5439.

Dated: August 4, 1992.

Yvonne M. Sabine, Director,
Panel Operations, National Endowment for the Arts.

[FR Doc. 92-18825 Filed 8-7-92; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Information Collections Submitted to OMB for Approval

AGENCY: National Archives and Records Administration.

ACTION: Notice of proposed information collections submitted to OMB for approval.

SUMMARY: The National Archives and Records Administration (NARA) is submitting the following proposed collections of information to the Office of Management and Budget for approval under the Paperwork Reduction Act and 5 CFR part 1320.

1. *Information collection:* Statistical research in archival records containing personal information

Respondents: Individuals who request access to privacy-restricted archival records in the National Archives under the provisions of 36 CFR 1256.4 for the purpose of biomedical statistical research. We estimate that we will receive no more than 3 requests per year; no requests have been received in the past 5 years.

Purpose: NARA evaluation of qualifications of researcher and proposed safeguards for protection of personal information in the records.

Frequency of response: Once per research project involving restricted records.

Estimated burden per response: 7 hours.

Current OMB approval: None.

2. *Information collection:* NHPRC Budget Form (NA Form 17001).

Purpose: Evaluation of grant applications.

Respondents: Public and private organizations and institutions applying for National Historical Publications and Records Commission (NHPRC) grants in support of projects for documentary editing and historical records preservation and planning. The NHPRC makes approximately 200 grants per year for these purposes.

Frequency of response: One-time with grant application.

Estimated burden per response: 3 hours.

Current OMB approval: 3095-0004. The current approval expires on September 30, 1992.

DATES: NARA invites the public to comment on the proposed information collections. Comments should be submitted by September 9, 1992.

ADDRESSES: Copies of the proposed information collections and supporting documentation can be obtained from the Program Planning and Congressional Liaison Division (NAA), room 409, National Archives Building, 7th and Pennsylvania Avenue, NW., Washington, DC 20408. Telephone requests may be made to (202) 501-5110.

Comments should be sent to Director, Program Planning and Congressional Liaison Division (NAA), National

Archives and Records Administration, Washington, DC 20408. A copy of the comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for NARA, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mary Ann Palmos or Nancy Allard at (202) 501-5110.

Dated: July 31, 1992.

Claudine J. Weiher,

Acting Archivist of the United States.

[FR Doc. 92-18826 Filed 8-7-92; 8:45 am]

BILLING CODE 7515-01-M

NUCLEAR REGULATORY COMMISSION

Portland General Electric Co.; Trojan Nuclear Plant

[Docket No. 50-344]

Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a schedular exemption to Facility Operating License No. NPF-1 issued to Portland General Electric Company, et al., (PGE or the licensee), for operation of Trojan Nuclear Plant located in Columbia County, Oregon.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant a schedular exemption to title 10, Code of Federal Regulation, part 50, appendix E, paragraph VI.4.d concerning implementation of the Emergency Response Data System (ERDS). The licensee requests a delay from the required February 13, 1993 date to June 4, 1993, a period of less than 4 months, for implementation of ERDS.

The proposed action is in accordance with the licensee's application dated June 24, 1992.

The Need for the Proposed Action

The proposed schedular exemption is required to provide the licensee the time to properly install, test, and implement ERDS at Trojan. Originally, it was scheduled to be installed during the 1992 refueling outage but, due to the extensive outage in 1991, the 1992 outage was cancelled. Moreover, the 1992 economy outage was too short to accommodate ERDS implementation. The 1993 refueling outage is scheduled to start on March 3, 1993, and ERDS installation, testing, and implementation is scheduled for this outage. Otherwise,

meeting the required ERDS implementation date would reduce operational flexibility and create an undue burden on plant resources.

Environmental Impact of the Proposed Action

The Commission has completed its evaluation of the proposed schedular exemption. Since the purpose of ERDS is to enhance the ability of the NRC to monitor the licensee's actions during an emergency at Trojan, and to supplement the existing system of voice transmission, as implemented by procedures, the delay of ERDS implementation will not affect the environment from a radiological standpoint. In fact, the plant will be shut down during most of the schedular exemption timeframe. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential nonradiological impacts, the proposed schedular exemption involves an onsite process computer system only. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the schedular exemption.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested schedular exemption. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility and create an undue burden on plant resources.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement related to operation of the Trojan Nuclear Plant dated August 1973.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the

proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed scheduler exemption.

For further details with respect to this action, see the licensee's application for amendment dated June 24, 1992, which is available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room at the Branford Price Millar Library, Portland State University, 934 SW., Harrison Street, P.O. Box 1151, Portland, Oregon 97207.

Dated at Rockville, Maryland, this 3d day of August, 1992.

For The Nuclear Regulatory Commission.

Theodore R. Quay,

Director, Project Directorate V, Division of Reactor Project III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92-18896 Filed 8-7-92; 8:45 am]

BILLING CODE 7590-01-M

Application for a License to Export a Utilization Facility

Pursuant to 10 CFR 110.70(b) "Public notice of receipt of an application", please take notice that the Nuclear Regulatory Commission has received the following application for an export license. A Copy of the application is on file in the Nuclear Regulatory Commission's Public Document Room located at 2120 L Street, NW., Washington, DC.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Secretary, U.S. Nuclear Regulatory Commission; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

In its review of the application for a license to export a utilization facility as defined in 109 CFR part 110 and noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the facility to be exported. The information concerning this application follows.

Name of applicant, Date of appl., Date received, Application number	Description	Value	End use	Country of destination
General Atomics: 07/17/92—07/20/92—XR157/01.	Two (2) Complete Control Rods and Various Equipment.	\$188,547	For use in TRIGA Research Reactor.....	Japan.

Dated this 31st day of July 1992 at Rockville, Maryland.

For the Nuclear Regulatory Commission.

Ronald D. Hauber,

Assistant Director for Exports, Security, and Safety Cooperation, Office of International Programs.

[FR Doc. 92-18897 Filed 8-7-92; 8:45 am]

BILLING CODE 7590-01-M

Guidance on Fire Protection for Fuel Cycle Facilities

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Guidance to applicants and licensees for preparing license applications and conducting operations.

SUMMARY: This notice provides guidance on fire protection for fuel cycle facilities in the form of a Technical Position. The Technical Position will be administered by the Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.

FOR FURTHER INFORMATION CONTACT: Amar Datta, Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards, Washington, DC 20555, (301) 504-2536.

SUPPLEMENTARY INFORMATION: In the **Federal Register** (54 FR 11590-98) dated March 21, 1989, the NRC published for comment four Branch Technical

Positions—Guidance on Management Controls/Quality Assurance, Requirements for Operation, Chemical Safety, and Fire Protection for Fuel Cycle Facilities. After consideration of the comments received and the experience gained in using these Technical Positions, the NRC has decided to revise and reissue the Technical Position on Fire Protection for Fuel Cycle Facilities. It is the NRC's intent that this revised Technical Position would serve as a source of information for applicants and licensees on the features of equipment, facilities, and procedures that can be used to provide reasonable assurance of fire safety for fuel cycle facilities. It would provide guidance for implementing fire protection programs at these facilities that would be acceptable to the NRC staff as having the elements necessary to protect health and minimize danger to life or property. It would thus also provide information to the staff in reviewing applications and inspection facilities.

The information contained herein reflects the NRC staff's views concerning good industry practice. However, the provisions of this Technical Position do not constitute requirements. Other approaches to the selection of equipment, design of facilities, and operational procedures are acceptable, provided that they grant equal or higher levels of protection of health and safety.

Technical Position on Fire Protection for Fuel Cycle Facilities

I. Introduction

To be approved by the NRC, any application for a license to possess and use licensed materials at a fuel cycle facility must provide information showing that the applicant's proposed equipment, facilities, and procedures are adequate to protect health and minimize danger to life or property. In the area of fire protection, the staff has in the past generally accepted compliance with local building codes and proof of insurance as sufficient information for approval of license applications. In addition, ad hoc measures have been taken in response to the staff's inspection findings relating to specific facilities. However, following an accident at a uranium hexafluoride production facility, the NRC undertook a major review of the operational safety of fuel cycle facilities. Both the recommendations of the Materials Safety Regulation Review Study Group,¹ appointed by the NRC, and an independent staff action to assess operational safety at each of 12 major fuel cycle facilities licensed by the NRC,² led the staff to the finding that fire protection is one of the most important safety concerns.

This finding, coupled with the experience of the applicants and the staff in their respective roles of operation and regulation of fuel cycle

facilities, led to the formulation of this Technical Position (TP), which is intended to provide guidance to applicants and staff in the area of fuel cycle facility fire protection. This TP provides recommendations and guidelines for implementing acceptable fire protection programs at fuel cycle facilities and has elements that are intended to ensure protection of health and minimize danger to life and property. The guidance should not, however, be considered mandatory, and nothing should preclude a licensee from adopting a program that is prudent and employs other techniques of fire protection that meet or exceed these guidelines.

II. Discussion

1. Fire Protection Concept

The concept of fire protection presented by this TP consists of measures that will achieve a balance among the following:

- * Prevention of fires,
- * Detection of fires, and
- * Containment and suppression of fires.

A discussion of these three levels of fire protection follows:

a. *Fire Prevention:* Fire prevention measures at a fuel cycle facility should start with the design of the buildings, structures, systems, components, and processes involved in the storage, handling, and processing of the radioactive materials and chemicals used in the processes. The processes should be designed and physically laid out so as to minimize the possibility of overheating, over-pressurization, leakage, and the confluence of combustibles and ignition sources except where required by the process. Even with the most well-designed facility, prevention of fires depends to a great extent on following good housekeeping practices and operating personnel scrupulously following safety instructions.

b. *Fire Detection:* The best fire prevention measures may occasionally fail, in which case an effective fire detection system would detect the occurrence of fire and activate alarm systems so that measures for containment and suppression of the fire and personnel evacuation may start promptly. The type and location of the detectors would depend on the type of hazard. The installation of a fire detection and alarm system is especially important where personnel presence is infrequent and the fire hazard is moderate or high.

c. *Containment and Suppression of Fire:* Containment of fire in its area of

origin and prevention of its spread to new areas and new combustibles is one of the first steps to be taken upon detection of a fire. This is achieved by activating systems such as barriers, ventilation dampers, exhaust fans, and drainage pumps to prevent migration of gases, hot combustion products, and flammable liquids to new areas. Fire suppression activities should start at the same time as barrier systems are activated. The media employed in the suppression and the means of their delivery to the fire source and to heated areas and substances depend on the plant area and the processes and equipment protected. The concerns for nuclear criticality safety, chemical safety, and the danger to personnel from non-life-supporting extinguishing media, such as carbon dioxide, should all be taken into account in planning a fire suppression system.

2. Fire Hazard Analysis

A number of fuel cycle facilities already in operation may not have all of the design and construction features considered desirable for fire protection. For such facilities, it is prudent to perform systematic fire hazard analyses of their operations. Such analyses could be expected either to reveal fire protection weaknesses or to confirm the adequacy of the protection measures. Where weaknesses are indicated, they may be corrected by a judicious combination of facility modification and additional fire protection measures. Also, the licensed activities, processes, or buildings of operating facilities may from time to time be modified. Whenever this happens, the fire hazard analyses should be updated. Otherwise, these should be reviewed and updated at regular intervals of time.

III. Position

1. Fire Protection Program

The licensee should establish and implement a Fire Protection Program. The program should reflect a commitment to perform tasks to ensure that the equipment and facilities are maintained in proper condition to prevent fires from occurring, maintain awareness of fire safety procedures among the employees and ensure compliance with those procedures, and maintain a readiness, if a fire does occur, to implement emergency procedures to suppress it and mitigate the consequences.

The program would be expected to include an appropriate set of the following components:

- a. Establishment of a Fire Safety Review Committee and a definition of

its duties, frequency of meetings, frequency of plant audits, and responsibilities for reporting and recordkeeping. (A plant safety committee may function as the Fire Safety Review Committee.)

- b. Initiation of a Fire Hazard Analysis of the facility and its periodic updating.

- c. Maintenance of the facility and equipment in proper condition to prevent fires from occurring.

- d. Review and control of modifications of the facility or processes to minimize fire hazard.

- e. Review and control of hazardous operations, such as welding and torch-cutting, and any nonroutine use of flammable or combustible materials.

- f. Routine inspection, testing, and maintenance of all fire protection equipment.

- g. Training of all employees in basic fire safety and of a selected group to respond to fire emergencies. (The latter group may be part of the plant emergency response team.)

- h. Reporting and investigation of fire incidents.

- i. Periodic performance of fire drills.

- j. Rules for good housekeeping with a view to minimizing fire danger.

2. Administrative Controls

2.1 Program Management

The licensee should ensure adequate management and supervisory attention to fire protection. The overall management of an adequate program would be expected to be under the direction and control of a senior level individual, who should be given the authority and staff assistance to implement measures relating to fire protection throughout the facility. Actual implementation of the day-to-day tasks of the program should be supervised by an individual having sufficient qualifications and practical experience in fire protection.

2.2 Plant Audits

Plant audits of fire protection should be performed at two levels as follows:

- a. Monthly audits (walk-downs) to detect and correct departures from good housekeeping practices or operating procedures that may impact fire safety.

- b. Annual audits by the Fire Safety Review Committee, including plant walkdowns, to review proper functioning of the Fire Protection Program and generally the overall fire safety of the facility.

3. Building Construction

3.1 Construction Standard

Type I construction, as classified by NFPA 220, Types of Building Construction, is considered adequately firesafe for the process buildings of the facility. (The National Fire Protection Association (NFPA) documents cited in the text are listed in the reference section in the order of their NFPA numbers.) This standard specifies that the structural members of the buildings, including walls, columns, beams, floors, and roofs, are to be constructed of approved noncombustible or limited combustible materials and have specified minimum fire resistance ratings. If nonprocess areas are housed in the same or adjoining buildings, the entire building complex should be the equivalent of a Type I construction.

3.2 Fire Areas

To confine fire in its area of origin and prevent its spread, areas containing processes or materials involving fire hazards should be separated by structural barriers into fire areas. In particular, solvent extraction areas, boiler rooms, incinerators, warehouses, control rooms, switchgear rooms, computer rooms, maintenance shops, fire pump areas, and office areas should be separate fire areas.

Structural barriers, including walls, floors, ceilings, and roofs, that bound fire areas should have appropriate fire resistance ratings. Boundaries of such fire areas may coincide with zones the facility is divided into, based, where such zoning exists, on radiotoxicity of the materials handled therein.

Openings in the barriers that are boundaries of the fire areas should have devices, such as fire doors and fire stops, installed in them. Such devices should have at least the same fire resistance ratings as the barriers in which they are installed.

3.3 Exposure Fire Risk

When a process building is close to other buildings or installations with flammable, combustible, or reactive liquid or gas storage, the risk of exposure fires originating in those installations to the process building concerned should be evaluated and appropriate protection measures should be taken. NFPA 80A, Protection of Buildings from Exterior Fire Exposures, provides guidance on protection from such exposures. NFPA 30, Flammable and Combustible Liquids Code, lists minimum separation distances from tank storages.

3.4 Personnel Egress

The building design should provide for safe means of egress for personnel in the event of a fire emergency. Egress routes should be clearly marked. NFPA 101, Safety to Life from Fire in Buildings and Structures, provides guidance on egress design and protection of egress routes.

3.5 Smoke Vents

If the building has undivided floor areas that are not provided with means of automatic fire suppression and are large enough that hose streams directed from outside may not reach all parts of the areas, mitigating features, such as smoke vents and curtain boards, should be provided. NFPA 204M, Smoke and Heat Venting, may be consulted.

3.6 Hidden Spaces

Concealed spaces should be devoid of combustibles as far as practicable. Suspended ceilings and their supports, insulation for pipes and ducts, and sound-attenuating materials should be noncombustible. All cracks or openings in floors leading to inaccessible under-floor spaces should be sealed.

3.7 Lightning Protection

Provisions should be made for protecting the facility from lightning damage. Guidance for the installation of such protection is provided by NFPA 78, Lightning Protection Code.

3.8 Drainage Provisions

Floor drains, sized to remove anticipated quantities of fire-fighting water, should be provided in process areas. Drainage from areas containing hazardous chemicals or radioactive materials should be collected in sumps for sampling and treatment before release to the environment.

3.9 Electric Installations

All electrical wiring and installations should be made, used, and maintained in accordance with industry standards, such as NFPA 70, National Electrical Code, and other standards that apply to special situations, such as NFPA 70E, Electric Safety Requirements for Employee Workplaces; NFPA 79, Electrical Standard for Industrial Machinery; and NFPA 75, Electrical Computer/Data Processing Equipment.

4. Ventilation System

4.1 Ventilation System Design

The ventilation system should be designed to isolate affected areas during fire accidents and to provide channels for exhausting fire products, through filters if necessary, to outside the plant. NFPA Standard 90A, Air Conditioning

and Ventilating Systems, may be consulted on ventilation design for fire protection.

4.2 HEPA Filters

When a ventilation system is required to prevent the release of radioactive material to the atmosphere, all materials of construction for the system should be noncombustible. HEPA filters should conform with industry standards, such as Underwriters Laboratories Standard UL-586 (also designated ANSI B 132.1), High Efficiency Air Filtration Units.

4.3 Barrier Penetrations

Whenever the ventilation duct system penetrates a fire-rated barrier, a fire damper, having a fire resistance rating at least equal to that required of the barrier, should be installed in the duct. Guidance will be found in UL 555, Standard for Fire Dampers and Ceiling Dampers.

4.4 Automatic Closing

All fire doors, fire dampers, and ceiling dampers should close automatically, and should remain closed, upon operation of a fusible link or other heat-actuated device.

4.5 Heating Furnaces

Heating furnaces that are combined with ventilation systems should be installed in accordance with industry standards, such as NFPA 54 (ANSI Z223), National Fuel Gas Code, if gas fired, or NFPA 31, Oil Burning Equipment, if oil fired. Guidance for the installation of electrical duct heaters will be found in NFPA 70, National Electrical Code.

5. Process Fire Safety

5.1 Some Chemicals and Their Fire Hazards

The process chemicals listed below are those that are used in bulk quantities in fuel cycle facilities and also are fire hazards.

5.1.1 Nitric Acid

Nitric acid is itself noncombustible, but under certain conditions, it nitrates cellulosic and other organic materials, making them easily ignitable. A nitric acid spill thus constitutes a fire hazard, in addition to being a corrosion and toxicity hazard.

5.1.2 Sulfuric Acid

In addition to its corrosion and toxicity hazard, this chemical has the property of absorbing water from organic materials accompanied by exothermic reaction, which may ignite the organic materials.

5.1.3 Anhydrous Ammonia

One of the uses of this chemical is as a source material for the production of hydrogen for use in reduction processes. It is a flammable gas, which is stored and pumped in the liquified state, and undergoes dissociation into hydrogen and nitrogen in a high-temperature dissociator at about 1650 °F. Anhydrous ammonia is flammable and presents, if ignited in a confined space, an explosion hazard. It also presents a toxicity hazard.

5.1.4 Hydrogen

Hydrogen has a high burning velocity and also a wide flammable range in mixtures with air. A small hydrogen flame, as at a leak from a pipe, is bluish and almost invisible. The hazards of fire and explosion are high in the event of a leak from any equipment that contains or uses hydrogen. Additionally, there is the hazard of explosion in vessels and furnaces where explosive mixtures of hydrogen and an oxidizer may form inadvertently.

5.1.5 Fluorine

Fluorine is one of the most reactive elements known. Apart from its being highly corrosive and toxic, it reacts violently with hydrogen and many organic materials and causes fires, even though it is itself nonflammable. Fluorine may also cause explosion in contact with metallic powders and water vapor.

5.2 Processes Involving Use of Flammable Liquids and Gases

5.2.1 Processes involving solvents or other chemical substances, that may be classified as flammable liquids according to NFPA 321, Classification of Flammable and Combustible Liquids, should be isolated from each other and from the remainder of the facility by locating them either in separate buildings or in spaces enclosed by barriers having a minimum fire resistance rating of 1 hour.

5.2.2 All electric motors, switchgears, lighting, and other electrical installations in these process areas should be of the explosive-proof type. NFPA 70, National Electrical Code, provides guidance.

5.2.3 No open flame should be permitted in these areas. Construction or maintenance work involving torch-cutting or welding may be permitted only when the process is shut down, the inventory of flammable and combustible materials is at a minimum, and safety measures, such as fire watches, are implemented. NFPA 51B, Fire Prevention

in the Use of Cutting and Welding, provides guidance.

5.2.4 The process areas should be provided with automatic fire detection and automatic explosion prevention/suppression systems. NFPA 69, Explosion Prevention Systems, provides guidance on design, selection, and installation of such systems.

5.2.5 Ovens or furnaces that use hydrogen as atmosphere and have a hydrogen burner (and usually also have a natural gas pilot burner) should have a flame-supervision system. Such a system should activate a visual and/or an audible alarm and should shut off the hydrogen supply upon loss of flame. NFPA 86C, Industrial Furnaces Using a Special Processing Atmosphere, provides guidance.

5.2.6 Where a process involving a flammable liquid or gas must be in the same fire area as an ignition source, such as an open flame, one or more analyzers should be installed strategically to monitor the flammable or combustible vapor or gas concentration in the air. The analyzers should activate both visible and audible alarms whenever the vapor concentration exceeds a set limit, for example 10 percent of the lower flammable limit. Simultaneously, ignition and heat sources in the area should be turned off automatically.

5.3 Fire Hazard in the Handling of Uranium Oxides

Uranium oxide powder, usually following a calcining or a blending process and sometimes when heated by process machinery, may undergo spontaneous exothermic chemical reaction. Such "unstabilized" powder is known to have ignited combustible components of transfer passages and mechanical handling machinery, such as vinyl pipes, flexible neoprene boots and parts of valves, and nylon parts of conveyors. Such components should be made of noncombustible materials, as far as practicable, or of materials having sufficiently high ignition temperatures and resistance to heat-degradation.

5.4 Machining Operations of Combustible Metals

5.4.1 Metals, such as uranium, magnesium, titanium, and zirconium, and their alloys, are known to be combustible, especially when in a finely divided form. Machining operations in the facilities should, therefore, be evaluated for the potential for combustible dust cloud formation and combustible scrap and swarf accumulation from operations, such as sawing, grinding, machining, and abrasive cutting. Fire protection

measures for all of these metals are similar. NFPA 480, NFPA 481, and NFPA 482, Standards for the Production, Processing, Handling and Storage of Magnesium, Titanium, and Zirconium, respectively, provide guidance.

5.4.2 No open flames should be permitted in the areas where machining operations of combustible metals are performed. If maintenance operations, such as welding, are to be performed in the vicinity, machining operations should be halted and metal scraps should be removed.

5.4.3 Machining operations producing fine particles of combustible metals should be performed in enclosures with a dust collection system in operation. The dust-laden air should be ducted to a dust collector and, if required, a HEPA filter for removal of radioactive particles. The collection hood and duct leading to the filter should be designed to minimize deposition of the fines and to facilitate cleaning. A liquid precipitation separator is the preferred type of dust collector.

5.4.4 Each dust-producing machine should be equipped with its own dust separator unit, as far as practicable.

5.4.5 Scrap and swarf generated by machining operations, and accumulated in the immediate area, and dust and sludge collected in the dust separators and ducts should be removed as often as necessary, but at least once a day.

5.4.6 Extinguishing agents suitable for the particular metal fire, as well as suitable scoops or applicators for the purpose, should be readily available to the operator performing the machining.

5.5 Incinerators

5.5.1 Incinerators should be separated from the remainder of the facility by fire barriers having a minimum 1-hour fire resistance rating.

5.5.2 If the incinerator is to burn radioactive-contaminated waste, its exhaust should be ducted to a sampling and filtration system before releasing it to the environment. The exhaust may be ducted also to the facility off-gas system. Such ducts should be designed to minimize deposition of particulate effluent and to facilitate cleaning.

5.5.3 Depending on the temperature of the exhaust, a cooling water spray or passage through a liquid precipitation separator may be needed for both cooling and dust separation.

5.6 Boilers and Boiler-Furnaces

5.6.1 Boilers for the supply of steam for process operations and boiler-furnaces should be separated from the remainder of the facility by fire barriers

that have a minimum 1-hour fire resistance rating.

5.6.2 The construction and operation of the boiler-furnaces should comply with industry standards, such as the relevant standards in the NFPA 85 series, depending on the type of furnace and the fuel used.

5.6.3 The fuel storage tanks should be separated from the furnace area by fire barriers that have a minimum 1-hour fire resistance rating. The fuel lines should be laid out to minimize the possibility of damage and should be clearly marked.

5.7 Stationary Combustion Engines

5.7.1 Stationary combustion engines, if located in part of a structure housing fuel cycle processes, should be in enclosures that have a fire resistance rating of at least 1 hour.

5.7.2 Rooms housing stationary combustion engines should be of noncombustible construction or, if combustible materials are used, should be protected by automatic fire suppression systems.

5.7.3 Process-generated dust or flammable vapors should be limited in the room when the engine is operating.

5.7.4 Fuel storage tanks, except for day tanks, should be located outside the room and should be constructed in accordance with industry standards, such as NFPA 30, Flammable and Combustible Liquids Code. Guidance on the construction and capacities of unenclosed day tanks will be found in NFPA 37, Stationary Combustion Engines and Gas Turbines.

5.7.5 The engine exhaust system should be designed to prevent ignition of any combustible material by contact with the hot metal surfaces or by leaking exhaust gases or sparks.

5.7.6 The stationary combustion engine room should be ventilated effectively to minimize accumulation of combustible vapor and the possibility of explosion. NFPA 37 provides guidance.

5.8 Storage and Handling of Flammable and Combustible Liquids and Gases

5.8.1 The construction, installation, operation, and maintenance of combustible liquid storage and the related loading and dispensing systems should comply with industry standards, such as NFPA 30, Flammable and Combustible Liquids Code.

5.8.2 Indoor storage of flammable and combustible liquids may be permitted in limited quantities in approved closed containers for day use and maintenance work or for diesel engine operation. Appropriate portable

fire extinguishers should be on hand at such locations.

5.8.3 Steel supports of aboveground storage tanks should be protected from exposure fires, if dictated by the proximity of other flammable or combustible liquid storage tanks, location in a common diked area, or proximity of a tank-truck loading and unloading area.

5.8.4 In addition to normal operating vents, some aboveground storage tanks may require emergency relief venting. NFPA 30 provides guidance on this matter.

5.8.5 The construction, installation, operation, and maintenance of bulk gas (including liquified gas) storage and the related loading and dispensing systems should comply with good industry practice, such as NFPA 50, Bulk Oxygen Systems at Consumer Sites; NFPA 50B, Liquified Hydrogen Systems at Consumer Sites; and NFPA 54, National Fuel Gas Code.

5.9 Hot Cells

5.9.1 The construction materials for hot cells should be noncombustible. The internal surface coatings should be noncombustible or limited combustible.

5.9.2 The liquid-filler windows should contain a noncombustible medium. Hydraulic fluids in the master-slave manipulators should be nonflammable.

5.9.3 Where process materials and equipment present a fire hazard, the quantities of combustible materials and the sources of ignition should be maintained at the absolute minimum. If flammable gases or vapors may be present in explosive proportions, an inert atmosphere should be provided when operating the hot cell.

5.9.4 If combustible materials are used in a hot cell, extinguishing agents that are compatible with the materials handled should be provided within the hot cell, together with their delivery systems. Nuclear criticality concerns should be considered in selecting extinguishing media.

5.9.5 Filters for the exhaust air from a hot cell should be of noncombustible construction.

5.9.6 Further guidance for hot cell fire protection is provided in NFPA 801, Facilities Handling Radioactive Materials.

5.10 Glove Boxes

5.10.1 The construction materials for glove boxes may be of the limited combustible type if only noncombustible process materials are used within them. Otherwise, except for the gloves, the glove box should be of noncombustible construction.

5.10.2 If combustible materials are used or if there is the possibility of an explosive mixture forming within the glove box, the relevant guidance provided for hot cells should also apply to glove boxes.

5.10.3 If a number of glove boxes are operated in series, fire dampers should be provided at intervals to impede propagation of fire.

5.11 Laboratories

The fire protection methods of laboratories handling radioactive materials are similar to those of chemical laboratories. Guidance is provided in NFPA 45, Fire Protection for Laboratories Using Chemicals.

6. Fire Detection and Alarm Systems

6.1 Automatic Fire Detectors

Automatic fire detectors of appropriate types should be installed in all areas with substantial combustibles that are infrequently visited or occupied only part of the 24-hour day, unless such areas are covered by automatic fire suppression systems.

6.2 Vapor and Gas Detectors

Automatic flammable vapor and gas detectors should be installed in areas where there is a potential for leakage of flammable liquids or gases.

6.3 Audible and Visible Alarms

Automatic fire detectors and flammable vapor or gas detectors should actuate audible and visible alarms in the area of origin of the alarm, as well as at a central monitoring station that is constantly supervised. Actuation of any fire suppression system, such as flow through a sprinkler system, should also actuate visible and audible alarms. The central monitoring stations should have continuous information on the status and functioning of the fire detection systems, combustible vapor/gas detection systems, and automatic fire suppression systems, including a zone indication of the origin of an alarm. These systems should comply with industry standards, such as NFPA 72G, Installation, Maintenance, and Use of Notification Appliances for Protective Signaling Systems; and NFPA 72E, Automatic Fire Detectors.

6.4 Manual Fire Alarms

Manual fire alarm actuators (pull-boxes) or telephones should be available at strategic locations, for example, near exits from the various facility areas.

7. Fire Suppression Equipment

7.1 Selection of Equipment

The selection of the specific equipment for suppression of fire in an area should take into account the severity of the hazard, type of activity performed in the area, nuclear criticality concerns, the consequences of a fire (e.g., the risk of release of radioactive material), and the consequences of spurious actuation of an automatic suppression system.

7.2 Automatic Sprinkler Systems

Automatic water-sprinkler coverage is the preferred method of fire suppression for most areas that have significant fire hazard. The notable exceptions are areas where accidental nuclear criticality is a concern and areas with a concentration of energized electric equipment, including computer installations and control rooms. NFPA 13, *Installation of Sprinkler Systems*, provides guidance on selection and design of sprinkler systems.

7.3 Gas or Foam Suppression Systems

Plant areas that have a significant fire hazard, but where water is unsuitable as a suppression agent, should be protected by other systems that employ fire suppression agents such as inert gases, carbon dioxide, halon, and high- or low-expansion foam. Guidance on carbon dioxide and halon systems is provided in NFPA 12 and NFPA 12A, respectively. Guidance on the selection and design of foam systems is provided in NFPA 11 and NFPA 11A. Selection of gaseous suppression systems should take into account protection of personnel and possible pressurization of the enclosure.

7.4 Standpipe and Hose Systems

Standpipe and hose systems should have readily accessible hose outlet locations. Guidance on standpipe and hose systems is provided in NFPA 14, *Installation of Standpipe and Hose Systems*.

7.5 Portable Fire Extinguishers

Portable fire extinguishers, suitable in capacity and type of suppression agent used, should be available throughout the facility, regardless of the availability of any other fire suppression system. The number and capacity of such extinguishers and their deployment should be in accordance with industry standards, such as NFPA 10, *Portable Fire Extinguishers*.

8. Fire Protection Water System

8.1 Water Supply

An adequate supply of water for the installed fire protection systems should

be ensured. Additional fire-fighting water that may be needed by an offsite fire department should be planned for in consultation with them. Compatible connections should be provided for offsite fire department use. The fire-water distribution system should be designed and constructed for high reliability. NFPA 24, *Private Fire Service Mains and Their Appurtenances*, should be used for guidance.

8.2 Fire Pump Installation

The fire pump installation should be adequate to deliver water at full design pressure to the farthest hydrant, standpipe and hose station, or sprinkler system. The installation should be in accordance with industry standards, such as NFPA 20, *Installation of Centrifugal Fire Pumps*.

8.3 Alternative Power for Pumps

Provision should be made for alternative sources of power for fire pumps, so that failure of one source will not disable the installation. A diesel engine-driven pump is typically used as an alternative to an electrically driven one.

8.4 Water Distribution System

The water distribution system should be designed so that the failure of a single component (e.g., a pump or valve) will not hamper the ability to deliver fire-fighting water to any part of the facility.

9. Fire Hazard Analysis

9.1 A Fire Hazard Analysis of the facility should be performed. Such a systematic analysis should divide the facility into "fire areas," and evaluate the fire safety of each area and of the facility as a whole. The analysis should, for each fire area:

- Account for all radioactive and combustible materials, including estimates of their heat content;
- Describe the processes performed and their potential for fire or explosion;
- Account for the sources of heat and flame;
- List the fire detection and suppression equipment; and
- Consider credible fire scenarios and evaluate the adequacy of the fire protection measures.

The analysis should then either conclude that the facility as a whole is adequately protected or list the deficiencies that should be corrected.

9.2 The deficiencies identified by the Fire Hazard Analysis should be corrected expeditiously. The analysis should then be reviewed by the responsible management official and revised to indicate that it is acceptable.

9.3 The Fire Hazard Analysis should be updated at periodic intervals (for example, every 2 years) and whenever there has been a significant modification of the facility, processes, or inventories.

10. Pre-Fire Plan

10.1 Purpose

The facility should have on file, and ready to use, a Pre-Fire Plan. Fire emergency planning is sometimes encompassed in the general radiological emergency planning required by license condition. However, a Pre-Fire Plan is different from a Radiological Contingency Plan in that it provides information needed by fire-fighting personnel responding to an emergency. Often, the same team of employees is trained to respond to both fire and radiological emergencies. This is acceptable, since a fire emergency may turn out to be a radiological emergency as well.

10.2 Contents

The Pre-Fire Plan should assign individual and alternate responsibilities for responding to a fire alarm or call; assessing the situation; suppressing incipient fires; assembling the site Fire Emergency Response Team and, if necessary, requesting offsite fire department assistance; personnel evacuation; orderly shutdown of processes; and safeguarding and control of radioactive material. The plan should clearly indicate, preferably with the help of site plans and drawings, the locations of the fire department-compatible connections and fire-fighting equipment, such as portable extinguishers, automatic fire suppression systems, sectional valves, standpipes, hydrants, and hoses. It should also indicate the areas of concentration of combustibles, storages of flammable and combustible liquids, and areas where use of water for fire suppression is restricted because of nuclear criticality or other concerns.

10.3 Coordination with the Offsite Fire Department

The Pre-Fire Plan should be prepared in consultation and coordination with the offsite fire department(s) most likely to respond to a call for assistance. The offsite fire department personnel should be given familiarization tours of the facility at least once a year.

11. Fire Emergency Response Team

11.1 Organization

The organization, training, and equipment of the Fire Emergency Response Team should be adequate to respond to any credible fire emergency.

with assistance from offsite fire departments where such assistance is available. NFPA 600, Private Fire Brigades, should be used for guidance.

11.2 Training

All members of the Fire Emergency Response Team should receive training adequate to perform their duties of responding to a fire emergency in the facility. NFPA 600 provides guidance on training and the frequency of refresher sessions and drills.

IV. References

U.S. Nuclear Regulatory Commission Documents

1. Federal Register (51FR45122), Report of the Materials Safety Regulation Review Study Group, December 17, 1986.
2. Results of Operational Safety Assessments at the Major Fuel Cycle Facilities: Memorandum from Hugh L. Thompson Jr., Director, Office of Nuclear Material Safety and Safeguards, to Victor Stello, Jr., Executive Director for Operations, U.S. Nuclear Regulatory Commission, July 1, 1987.
3. NUREG 0800, Standard Review Plan 9.5.1, Guidelines for Fire Protection for Nuclear Power Plants, Revision 2, July 1981.
4. Federal Register, Vol. 54, No. 53, Guidance on Management Controls/Quality Assurance, Requirements for Operation, Chemical Safety, and Fire Protection for Fuel Cycle Facilities, March 1989.

National Fire Protection Association Documents

5. NFPA 10-1990, Portable Fire Extinguishers.
6. NFPA 11-1988, Low Expansion Foam and Combined Agent Systems.
7. NFPA 11A-1988, Medium- and High-Expansion Foam Systems.
8. NFPA 12-1989, Carbon Dioxide Extinguishing Systems.
9. NFPA 12A-1989, Halon 1301 Fire Extinguishing Agent Systems.
10. NFPA 12B-1990, Halon 1211 Fire Extinguishing Systems.
11. NFPA 13-1989, Installation of Sprinkler Systems.
12. NFPA 14-1990, Installation of Standpipe and Hose Systems.
13. NFPA 15-1990, Water Spray Fixed Systems for Fire Protection.
14. NFPA 16-1991, Deluge Foam-Water Sprinkler and Foam-Water Spray Systems.
15. NFPA 20-1990, Installation of Centrifugal Fire Pumps.
16. NFPA 24-1987, Private Fire Service Mains and Their Appurtenances.
17. NFPA 30-1990, Flammable and Combustible Liquids Code.

18. NFPA 31-1987, Oil Burning Equipment.
19. NFPA 37-1990, Stationary Combustion Engines and Gas Turbines.
20. NFPA 45-1986, Fire Protection for Laboratories Using Chemicals.
21. NFPA 50-1990, Bulk Oxygen Systems at Consumer Sites.
22. NFPA 50B-1989, Liquefied Hydrogen Systems at Consumer Sites.
23. NFPA 51B-1989, Fire Prevention in Use of Cutting and Welding Processes.
24. NFPA 54-1988, ANSI Z223.1-1988, National Fuel Gas Code.
25. NFPA 69-1986, Explosion Prevention Systems.
26. NFPA 70-1990, National Electrical Code.
27. NFPA 70E-1988, Electrical Safety Requirements for Employee Workplaces.
28. NFPA 72G-1989, The Installation, Maintenance and Use of Notification Appliances for Protective Signaling Systems.
29. NFPA 72E-1990, Automatic Fire Detectors.
30. NFPA 75-1989, Electronic Computer/Data Processing Equipment.
31. NFPA 77-1988, Recommended Practice on Static Electricity.
32. NFPA 78-1989, Lightning Protection Code.
33. NFPA 79-1987, Industrial Machinery.
34. NFPA 80-1990, Fire Doors and Windows.
35. NFPA 80A-1987, Protection of Buildings from Exterior Fire Exposures.
36. NFPA 85D-1989, Prevention of Furnace Explosions in Fuel Oil-Fired Multiple Burner Boiler-Furnaces.
37. NFPA 86C-1987, Industrial Furnaces Using a Special Processing Atmosphere.
38. NFPA 90A-1989, Air Conditioning and Ventilating Systems.
39. NFPA 90B-1989, The Installation of Warm Air Heating and Air Conditioning Systems.
40. NFPA 101-1991, Safety to Life from Fire in Buildings and Structures.
41. NFPA 204M-1991, Smoke and Heat Venting.
42. NFPA 220-1985, Types of Building Construction.
43. NFPA 251-1990, Fire Tests of Building Construction and Materials.
44. NFPA 321-1991, Classification of Flammable and Combustible Liquids.
45. NFPA 600-1986, Private Fire Brigades.
46. NFPA 801-1991, Facilities Handling Radioactive Materials.
47. NFPA 803-1988, Recommended Fire Protection Practices for Light Water-Cooled Nuclear Reactors.

Other Documents

48. American National Standards Institute (ANSI) N665-1985, Facilities for Fabricating Fuel for Light Water Reactors (LWR)—Fire Protection.
49. ANSI/ASHRAE 15, Safety Code for Mechanical Refrigeration.
50. American Society for Testing Materials (ASTM) E-84, Surface Burning Characteristics of Building Materials (1976).
51. ASTM E-119, Fire Test of Building Construction and Materials (1976).
52. Factory Mutual System Approval Guide—Equipment, Materials, Services for Conservation of Property.
53. National Fire Protection Association, Fire Protection Handbook.
54. Underwriters Laboratories (UL) 555, Standard for Fire Dampers and Ceiling Dampers.
55. UL 586 (ANSI B 132.1), High Efficiency Air Filtration Units.
56. UL Building Materials Directory.

Dated at Rockville, Maryland, this 29th day of July 1992.

For the Nuclear Regulatory Commission
John W. N. Hickey,
Chief, Fuel Cycle Safety Branch, Division of
Industrial and Medical Nuclear Safety,
NRC.

[FR Doc. 92-18898 Filed 8-7-92; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs

Dated: July 23, 1992.

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice of proposed revision and expansion of OMB Circular No. A-94.

SUMMARY: Notice is hereby given that the Office of Management and Budget (OMB) proposes to revise Circular A-94. The revised Circular includes expanded guidance for the conduct of benefit-cost and cost-effectiveness analysis. It also includes guidelines for lease-purchase analysis that were formerly provided in OMB Circular A-104, which has been rescinded. A draft of the revised Circular is available on request from the Office of Management and Budget.

Circular A-94 was last revised in 1972. At that time, the Circular specified a 10 percent real discount rate for use in most benefit-cost and cost-effectiveness analyses. An exception was subsequently provided, in Circular A-

104, for analysis of lease-purchase decisions, where nominal Treasury interest rates were specified as the discount rates to use. The newly revised Circular modifies its guidance in two main ways.

- General guidelines for benefit-cost and cost-effectiveness analysis are provided for the first time.

- The base case discount rate is lowered from a real rate of 10 percent to 7 percent. For lease-purchase and other analyses where costs and benefits are confined to changes in Government cash outlays or receipts, Treasury interest rates are recommended as discount rates.

A section by section guide to the revised Circular follows:

1. Sections 1 to 4 present the purpose, authority and scope of the Circular. The purpose is to provide an outline or checklist that could be used to evaluate a completed benefit-cost or cost-effectiveness analysis. The intention is not to instruct the agencies in how to perform such analyses, but to outline basic standards that such analyses must meet. The older version of the Circular did this only with respect to the discount rate.

Since 1972 the scope of Circular A-94 has been expanded to include regulatory impact analysis. More recently the President's April 29, 1992, memorandum requiring benefit-cost analysis of legislative proposals further expands its scope.

2. Section 5 reviews the basic principles of benefit-cost and cost-effectiveness analysis. Section 6 reviews basic issues in the identification and measurement of benefits and costs. The material in these sections is standard practice for professional-quality economic analysis.

3. Section 7 describes how to treat inflation. Recommended inflation projections are based on the Administration's semi-annual economic assumptions that are published with the Budget and in the Mid-Session Review of the Budget. Credible private sector forecasts can be used for sensitivity analysis.

4. Section 8 presents the new discount rate guidance. A base case real discount rate of 7 percent is recommended for public investments that have benefits external to the Federal Government and for regulations. Sensitivity analysis around this rate is recommended.

- The 7 percent rate approximates the average real pretax return to capital in the private sector.

- The 7 percent rate is also more consistent rate with a variety of other discounting principles than a 10 percent rate is. These other principles include,

under some assumptions, the shadow price of capital approach.

Treasury rates are recommended for discounting internal Government investments and lease-purchase decisions where the main consideration is minimizing Government costs. Use of the Treasury rate in these cases is supported by the principles of the shadow price of capital approach.

5. Section 9 sets guidelines for the treatment of uncertainty. Analysts are urged to characterize the probability distributions of benefits and costs while using expected values as the base case. Sensitivity analysis of major assumptions is recommended.

6. Section 10 suggests that any significant distributional effects of policies be reported. The importance of recognizing the actual economic incidence of Government programs is emphasized.

7. Section 11 requires a supplementary sensitivity analysis to reflect the excess burden of tax-financed Government expenditures. The sensitivity analysis is required for any proposal with Federal costs in which benefits accrue directly to the public. The sensitivity analysis would multiply most Federal expenditures by an adjustment factor of 1.25. This is a reasonable estimate well within the range of recent estimates of the Government's marginal cost of funds (1.15 to 1.50 percent per dollar of Federal revenue). Net present value of benefits should be reported both with and without the adjustment.

8. Section 13 provides general guidance for lease-purchase analysis. Previously, this guidance was included in Circular A-104, which was recently rescinded in anticipation of issuance of a revised Circular A-94.

DATES: Persons who wish to comment on the proposed revision of Circular A-94 should submit their comments no later than September 1, 1992.

ADDRESSES: Comments should be addressed to: Robert B. Anderson, Office of Economic Policy, OMB, room 9002 New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Robert B. Anderson, Office of Economic Policy, OMB, telephone (202) 395-3381 or Randolph M. Lyon, Office of Economic Policy, OMB, telephone (202) 395-5800. Copies of the draft Circular are available at the address above.

James C. Murr,

Associate Director, Legislative Reference and Administration, Office of Management and Budget.

[FR Doc. 92-18926 Filed 8-7-92; 8:45 am]

BILLING CODE 3110-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-30982; File No. SR-Amex-92-21]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Filing and Order Granting Approval on an Accelerated Basis of a Proposed rule change Relating to Additional Delivery Periods

July 31, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934,¹ notice is hereby given that on July 13, 1992, the American Stock Exchange, Inc. ("Amex") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-Amex-92-21) as described in Items I, II, and III below, which Items have been prepared mainly by Amex, a self-regulatory organization ("SRO"). The Commission is publishing this notice and order to solicit comments from interested persons and to approve the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to implement on a permanent basis procedures under Amex Rule 124(e) to provide for additional periods for delivery of securities, including delivery on the second, third, and fourth days after trade date. The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

¹ 15 U.S.C. 78s(b)(1) (1988).

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose

Under Amex Rule 124(e), bidders and offerors may specify that an order is subject to any additional settlement periods as the Exchange may from time to time determine. On February 1, 1990, the Commission approved, on a eighteen month pilot basis, procedures under Rule 124(e) for the delivery of Amex securities on the second, third, and fourth days following trade date ("T").² Subsequently, the Commission approved two six-month extensions of the pilot to January 31, 1992³ and to July 31, 1992,⁴ respectively. The Commission previously had approved on a permanent basis next day ("T+1") deliveries under Amex Rule 124(b).⁵ The Amex now proposes that the pilot procedures to accommodate the additional settlement periods (i.e., T+2 through T+4) be approved on a permanent basis.

The Amex has reviewed operation of the T+1 through T+4 delivery periods during the pilot program of almost two and one-half years and has concluded that member firm clearance and settlement procedures have adequately accommodated such non-regular way settlement. The Amex is aware of no difficulties resulting from settlement of such transactions directly between the parties involved and outside of the facilities of a registered clearing agency. In addition, such additional delivery periods (i.e., T+1 through T+4) have afforded greater flexibility to members and their customers in structuring investment strategies and advancing their investment objectives.

(2) Statutory Basis

The Amex believes that the proposed rule change is consistent with Section 6(b) of the Act,⁶ in general, and that it furthers the objectives of section 6(b)(5) of the Act,⁷ in particular, in that it fosters cooperation and coordination

with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities.

B. Self-Regulatory Organization's Statement on Burden on Competition.

The Amex believes that the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Amex has neither solicited nor received any written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission believes that the proposal meets the requirements of the Act and, in particular, the requirements of section 6(b) of the Act.⁸ Specifically, section 6(b)(5) of the Act⁹ requires that the rules of an exchange be designed to foster cooperation and coordination with persons engaged in the regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities and be designed to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Commission believes that additional delivery periods will afford Amex members greater flexibility in formulating their investment strategies and in accommodating the investment needs of their customers. Moreover, the Commission notes that Amex has been using these additional settlement time frames for approximately two and one-half years under temporary approval orders. During this time, the commission has monitored Amex's data on the use of the additional settlement time frames and has found their use to be rather modest with no indication of any disruption or other effect on regular-way settlement.¹⁰ Further, the additional time frames are similar to non-regular way settlement time frames that currently are available at certain other national securities exchanges.¹¹

The Amex has requested that the Commission find good cause for

approving the proposed rule change prior to the thirtieth day after the date of publication of the notice. Without accelerated approval, the Amex would be required to stop using its T+2 through T+4 settlement procedures as of the close of business on July 31, 1992, which is the expiration date of the current pilot program. The Commission believes that it is in the public interest for the existing Amex settlement procedures to continue without interruption and without needless inconvenience to Amex members and their customers. Accordingly, the Commission finds that good cause exists for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice in the Federal Register.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of Amex. All submissions should refer to File No. SR-Amex-92-21 and should be submitted by August 31, 1992.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹² that the proposed rule change referenced above (File No. SR-Amex-92-21) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹³

Jonathan Katz,
Secretary.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 92-18889 Filed 8-7-92; 8:45 am]

BILLING CODE 8010-01-M

² Securities Exchange Act Release No. 27665 (February 1, 1990), 55 FR 4503 [File No. SR-Amex-88-20].

³ Securities Exchange Act Release No. 29511 [July 31, 1991], 56 FR 37735 [File No. SR-Amex-91-19].

⁴ Securities Exchange Act Release No. 30338 (February 4, 1992), 57 FR 5030 [File No. SR-Amex-92-02].

⁵ Securities Exchange Act Release No. 28127 (September 29, 1988), 53 FR 39388 [File No. SR-Amex-88-20].

⁶ 15 U.S.C. 78f(b) (1988).

⁷ 15 U.S.C. 78f(b)(5) (1988).

⁸ 15 U.S.C. 78f(b) (1988).

⁹ 15 U.S.C. 78f(b)(5) (1988).

¹⁰ "Regular-way" means settlement on the fifth business day after the trade date. E.g., New York Stock Exchange Rule 64(3).

¹¹ Such settlement time frames have been in operation at the New York Stock Exchange, Midwest Stock Exchange, and Boston Stock Exchange since 1987. Securities Exchange Act Release No. 24161 (March 2, 1987), 52 FR 7350 [File

Nos. SR-NYSE-85-37, SR-MSE-86-04, and SR-BSE-85-08].

¹² 15 U.S.C. 78s(b)(2) (1988).

¹³ 17 CFR 200.30-3(a)(12) (1991).

[Release No. 34-30994; File No. SR-CSE-92-05]

Self-Regulatory Organizations; Filing of Proposed Rule Change by Cincinnati Stock Exchange, Inc. Relating to Approval of Membership Applications

August 3, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 17, 1992, the Cincinnati Stock Exchange, Inc. ("CSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CSE proposes to amend Article II, Section 6(c) of its Code of Regulations ("By-Laws") regarding the processing of membership applications to specify that approval by the Membership Committee is final and to eliminate the requirement of further review by the Board of Trustees ("Board").

The following is the text of the proposed rule change ¹ (new material italicized; deletions bracketed):

Article II Section 6 Application Procedures for Admission as a Member or an Associated Person of a Member

(c) Applications received by the Exchange's Secretary shall be referred to the Exchange's Membership Committee and, if a majority of the Committee is satisfied that the applicant is qualified for membership pursuant to the provisions of this Article, the Committee shall promptly notify the Secretary of the Exchange of such determination, and the Secretary shall promptly notify, in writing, [both the Board of Trustees and] the applicant of the Committee's determination. [Within 30 days of such notification, the Board of Trustees may reverse the determination of the Membership Committee that the applicant is qualified for membership; provided, however, that at the end of the 30-day period] and the applicant shall be admitted to membership. [unless a majority of the Board specifically rejects the applicant and the Secretary of the

Exchange notifies the applicant, in writing, of the grounds for the Board's rejection no later than 5 days after the Board's determination.]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purposes of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to expedite new member access to Exchange facilities. After an applicant has been approved by the Membership Committee, the Board has 30 days under the current procedures to reverse that decision. Rarely, if ever, has the Board done so. The Exchange believes that this delay has impeded the Exchange's business without demonstrating countervailing benefits and should be removed.

The proposed changes are consistent with Section 6(b) of the Act, and in particular with section 6(b)(5), in that they are designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed changes should have no adverse impact on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The proposed rule change was adopted by written consent of the members. No comments apart from votes were received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the Federal Register or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer

period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CSE. All submissions should refer to File No. SR-CSE-92-05 and should be submitted by August 31, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 92-18871 Filed 8-7-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-30981; File No. SR-MSTC-92-06]

Self-Regulatory Organizations; Midwest Securities Trust Company; Filing and Order Granting Temporary Accelerated Approval of a Proposed Rule Change Establishing the Institutional Participant Services Program

July 31, 1992.

Pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act") ¹ notice is hereby given that on July 22, 1992, the Midwest Securities Trust Company ("MSTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule

¹ The Commission notes that in conjunction with this proposal the CSE withdraws File No. SR-CSE-92-03.

¹ 15 U.S.C. 78s(b)(1) (1988).

change as described in Items I, II, and III below, which Items have been prepared by MTSC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change on a temporary basis through January 31, 1993.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change establishes (i) the Institutional Participant Services Program ("Program") and (ii) a new category of participants ("Institutions").²

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MSTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. MSTC has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Commission has approved the proposed rule change on a temporary basis until July 31, 1992 ("Temporary Approval Period").³ The rationale for initially approving the rule change on a temporary basis was to provide MSTC with the opportunity to formulate more definitive financial and operational standards for Institutions that desire to participate in the Program. Subsequently, on December 26, 1990, MSTC filed a proposed rule change (SR-MSTC-90-10) which requested permanent approval of the Program and proposed more definitive standards of participation and of financial and operational capabilities for Institutions.⁴

In order to provide the Commission with the opportunity to continue its study of these standards while providing continuity of service to Institutions that currently participate in the Program, this proposed rule change requests that the Commission extend the Program under the terms of the Temporary Approval Orders through January 31, 1993. MSTC believes that the proposed rule change is consistent with section 17A of the Act⁵ because it will promote the prompt and accurate clearance and settlement of securities transactions and help perfect the national system for the clearance and settlement of securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

MSTC does not believe that any burdens will be placed on competition as a result of the proposed rule change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

MSTC has not received any comments from participants of the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing of Commission Action

The Commission finds that the proposed rule change is consistent with the requirements of the Act and, in particular, with the requirements of sections 17A(b)(3) (A) and (F) of the Act.⁶ Those sections require that the rules and organizational structure of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to remove impediments to and perfect the mechanism for the national system for the prompt and accurate clearance and settlement of securities transactions. The Commission believes that MSTC's proposal will help achieve these requirements by providing Institutions with the opportunity to participate directly in the national market system through MSTC.

MSTC requests the Commission to find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. Such accelerated approval would permit MSTC to offer continuity of service to Institutions that participate in the Program while providing the

Commission with sufficient time to analyze the more definitive standards of participation and of financial and operational capability recently proposed by MSTC.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission does not anticipate that it will receive any significant negative comment on the proposed rule change in view of the fact that no comments were received on the proposals approved in the Temporary Approval Orders, which were identical in substance to this proposed rule change. Furthermore, the Commission notes that the Program has operated without incident during the Temporary Approval Period. Thus, accelerated approval of the proposed rule change on a temporary basis will permit MSTC to provide continuity of service to those Institutions that currently participate in the Program while the Commission continues to study MSTC's proposed permanent standards of participation and of financial and operational capabilities for such Institutions.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the principal office of MSTC. All submissions should refer to file number SR-MSTC-92-06 and should be submitted by August 31, 1992.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁷ that the proposed rule change (File No. SR-MSTC-92-06) be, and hereby is, approved on a temporary basis through January 31, 1993.

² Attached as exhibit A and exhibit B, respectively, to Securities Exchange Act Release No. 28844 (February 1, 1991), 56 FR 5035 [File No. SR-MSTC-91-01], are the text of the proposed rule change and MSTC's procedures for the Program.

³ Securities Exchange Act Release Nos. 27752 (March 1, 1990), 55 FR 8271 [File No. SR-MSTC-89-05]; 28844 (February 1, 1991), 56 FR 5035 [File No. SR-MSTC-91-01]; 29493 (July 26, 1991), 56 FR 36854 [File No. SR-MSTC-91-03]; and 30326 (January 31, 1992), 57 FR 4783 [File No. SR-MSTC-92-01] (collectively "Temporary Approval Orders").

⁴ For a complete description of the services offered under the Program and the current standards of financial and operational capabilities

for Institutions under the Program, refer to Temporary Approval Orders.

⁵ 15 U.S.C. 78q-1 (1988).

⁶ 15 U.S.C. 78q-1(b)(3) (A) and (F).

⁷ 15 U.S.C. 78a(b)(2).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁶

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 92-18868 Filed 8-7-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-30983; [File No. SR-MSE-92-07]

Self-Regulatory Organizations; Midwest Stock Exchange; Withdrawal of a Proposed Rule Change Amending Its Certificate of Incorporation

July 31, 1992.

On May 26, 1992, Midwest Stock Exchange ("MSE") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ a proposed rule change that would amend its Certificate of Incorporation.

Notice of the proposed change was published on June 30, 1992 to solicit comment from interested persons.² No letters of comment were received by the Commission. Only July 27, 1992, MSE withdrew the proposal.³

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[Rel. No. IC-18875; 812-7945]

Bell Atlantic Financial Services, Inc.; Application

July 31, 1992.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: Bell Atlantic Financial Services, Inc. ("Financial").

RELEVANT ACT SECTIONS: Exemption requested pursuant to section 6(c) from the provisions of subparagraphs (a)(1) and (a)(3) of rule 3a-5 under the Act.

SUMMARY OF APPLICATION: Applicant seeks an order under section 6(c) from the provisions of subparagraphs (a)(1) and (a)(3) of rule 3a-5 in connection with the offer and sale of applicant's

securities to raise funds for the business operations of its parent corporation and certain subsidiaries thereof without registering as an investment company.

FILING DATE: The application was filed on June 19, 1992, and amended on July 21, 1992.

HEARING OR NOTIFICATION OF HEARING:

An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 25, 1992, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, 501 Carr Road, Wilmington, Delaware 19809.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 272-3026, or Nancy M. Rappa, Branch Chief, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Financial, a wholly-owned subsidiary of Bell Atlantic Investments, Inc. ("Bell Investments"), which is a wholly-owned subsidiary of Bell Atlantic Corporation ("Bell Atlantic"), was incorporated under Delaware law on November 22, 1983.

2. Bell Atlantic was incorporated in 1983 under Delaware law. On January 1, 1984, pursuant to a consent decree, AT&T transferred to Bell Atlantic its 100% ownership in seven telephone companies (the "Telephone Subsidiaries"). In addition, Bell Atlantic and Ameritech Corporation each own approximately 34% of the outstanding stock of Telecom Corporation of New Zealand Limited ("Telecom"). Bell Atlantic is subject to the reporting requirements of the Securities Exchange Act of 1934.

3. The Telephone Subsidiaries provide telecommunications services and certain related services. They are subject to regulation by the Federal

Communications Commission with respect to interstate services and certain related matters, and also are subject to regulation by the public utility commissions in the respective jurisdictions in which they operate with respect to intrastate rates, services, and other matters.

4. Bell Investments directly or indirectly holds 100% of the stock of a number of subsidiaries that engage in lines of business that are primarily unregulated (the "Unregulated Companies"). These lines of business include providing wireless communications products and services; servicing and repairing computers; marketing and maintaining customer premises equipment; providing software for telecommunications and computer networking; lease financing of commercial, industrial, medical, and high-technology equipment; and real estate investment and development.

5. Financial was formed for the primary purpose of providing short-term financing for Bell Atlantic and the Unregulated Companies and to keep cash flows for the Unregulated Companies and to keep cash flows for the Unregulated Companies separate and distinct from those of the Telephone Subsidiaries. Presently, funds are made available to Financial through unsecured lines of credit with a number of banks. Financial also provides centralized cash management services to the Unregulated Companies, and temporarily invests available funds on behalf of Bell Atlantic and the Unregulated Companies in short-term money market instruments including, but not limited to, Treasury bills, time deposit instruments, and commercial paper.

6. Financial intends to issue short-term, intermediate-term, and long-term debt securities ("Debt Securities"). The Debt Securities will be offered and sold in public offerings registered under the Securities Act of 1933 (the "1933 Act") or in transactions exempt from the registration requirements of the 1933 Act.

7. In the case of an offering of securities not requiring registration under the 1933 Act, Financial will provide each offeree with disclosure materials which will include a description of the business of Bell Atlantic and its subsidiaries and other data of the character customarily supplies in such offerings. In the event of a subsequent offering, these materials will be updated at the time thereof to reflect material changes in the financial condition of Bell Atlantic and its subsidiaries, taken as a whole.

¹ 17 CFR 200.30-3(a)(12).

² 15 U.S.C. 78s(b)(1).

³ See Securities Exchange Act Release No. 30844 (June 19, 1992) 57 FR 29106 (June 30, 1992).

⁴ Letter from J. Craig Long, Vice President, General Counsel and Secretary, MSE to Jonathan Kallman, Associate Director, Division of Market Regulation, SEC, dated July 27, 1992.

8. All loans made by Financial to Bell Atlantic and the Unregulated Companies will bear interest at least equal to that Financial is required to pay to obtain funds through its corresponding borrowings. The amounts and maturity of these loans will allow Financial to make timely payments of principal, interest, and premium, if any, on its borrowings.

9. Financial's proposed financing activities will comply with all of the provisions of rule 3a-5 under the Act except for the requirement that Financial's parent unconditionally guarantee the Debt Securities. Instead of an unconditional guarantee, Bell Atlantic and Financial will enter into and keep in force a support agreement prior to the issuance of any Debt Securities (the "Support Agreement").

10. Pursuant to the Support Agreement, Bell Atlantic will agree to cause Financial to maintain a positive tangible net worth as determined in accordance with generally accepted accounting principles and, if Financial requires funds to pay principal, interest, and premium, if any, when due in connection with the Debt Securities, and such funds are not obtainable by Financial from other sources on commercially reasonable terms, Bell Atlantic shall provide funds to Financial to assure that Financial will be able to pay such principal, interest, and premium, if any, when due.

11. The Support Agreement also will provide that holders of Debt Securities or, if applicable, a trustee acting on their behalf, shall be entitled to proceed directly against Bell Atlantic without first proceeding against Financial to enforce Financial's rights under the Support Agreement or to obtain payment of any defaulted interest, principal, or premium owed to the holders of Debt Securities, but no such holder will have recourse to or against the stock or assets of any Telephone Subsidiary, Telecom or any other operating telephone company which may be owned directly or indirectly by Bell Atlantic.

12. Funds available to satisfy Bell Atlantic's obligations under the Support Agreement will include dividends paid by the Telephone Subsidiaries, as well as all revenue, stock, and assets of Bell Atlantic's other subsidiaries, including the Unregulated Companies. As of December 31, 1992, Bell Atlantic's interest in companies other than the Telephone Subsidiaries and Telecom was approximately \$5 billion. In the year ended December 31, 1992, the Telephone Subsidiaries collectively declared approximately \$1.2 billion in cash dividends to Bell Atlantic.

Applicant's Legal Analysis

1. Financial was formed for the purpose of providing financing to Bell Atlantic and the Unregulated Companies, and Financial will not engage in a general program of investment. While the activities contemplated may bring Financial within the definition of an investment company contained in section 3(a) of the Act, Financial believes it is a finance subsidiary intended to be excepted from the definition by rule 3a-5 under the Act.

2. Financial represents that Bell Atlantic has determined to enter into the Support Agreement instead of an unconditional guarantee because it wishes to separate entirely the financing of its unregulated activities from the regulated Telephone Subsidiaries. As a result of the separation of these activities, the assets of any operating telephone company which may be owned directly or indirectly by Bell Atlantic will not be subject to the claims of any holder of Debt Securities. Excluding these assets from the Support Agreement is intended to satisfy the state agencies that have jurisdiction over the Telephone Subsidiaries that the customers of the Telephone Subsidiaries do not and will not subsidize or support the non-regulated activities of Bell Atlantic. Nevertheless, the Support Agreement proposed as a functional equivalent of an unconditional guarantee will provide substantially the same protections to the holders of Debt Securities as an unconditional guarantee.

3. In adopting rule 3a-5 under the Act, the Commission did not rule out the use of alternatives to the unconditional guarantee but stated that such alternatives would be evaluated on a case-by-case basis (Investment Company Act Release No. 14275 (Dec. 14, 1984) (the "Adopting Release")).

4. The Support Agreement satisfies the purposes behind the unconditional guarantee in rule 3a-5, as such purposes are described in the Adopting Release. Notwithstanding that a considerable portion of Bell Atlantic's assets would not be subject to claims of the holders of Debt Securities, Bell Atlantic has other assets, valued at approximately \$5 billion, that ensure its ability to meet its obligations under the Support Agreement.

5. Granting the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant's Conditions

Financial agrees that the following conditions may be imposed in any order of the Commission granting the requested relief:

1. Financial has entered into, and will keep in force (except as set forth below), the Support Agreement, which is and shall continue to be the functional equivalent of an unconditional guarantee. The Support Agreement provides, and will continue to provide, as follows:

a. Bell Atlantic owns and shall continue to own all of the outstanding voting stock of Financial;

b. Bell Atlantic will provide to Financial funds (as capital, or if Bell Atlantic and Financial agree, as a subordinated loan) as required if Financial is unable to make timely payment of interest, principal, or premium, if any, on any Note issued by Financial;

c. Bell Atlantic will cause Financial to have at all times a positive net worth (net assets less intangible assets, if any) as determined in accordance with generally accepted accounting principles; and

d. any holder of the Debt Securities issued by Financial may proceed directly against Bell Atlantic without first proceeding against Financial to enforce Financial's rights under the Support Agreement, or to obtain payment of any defaulted interest, principal or premium, owed to such holders, so long as no holder of the securities issued by Financial will have recourse to or against the stock or assets of the Telephone Subsidiaries, Telecom, or any other operating telephone company which may be owned directly or indirectly by Bell Atlantic.

2. The Support Agreement may be modified or amended in a manner that adversely affects the rights of the holders of Financial's Debt Securities only if all affected holders of the Debt Securities consent in advance and in writing to such modification or amendment. In addition, no modification or amendment to the Support Agreement relating to the four provisions set forth in the preceding paragraph shall be made unless Financial applies for and receives an amended order.

3. The Support Agreement may be terminated only after all Debt Securities issued by Financial are paid in full. After termination of the Support Agreement, no additional Debt Securities will be issued by Financial without an additional order, unless a new support agreement is entered into that is identical in all material respects

to the Support Agreement described in the application.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 92-18864 Filed 8-7-92; 8:45 am]

BILLING CODE 8010-01-M

[Investment Company Act Rel. No. 18876;
International Series Rel. No. 430; 812-7976]

Columbia International Stock Fund, Inc.; Application

July 31, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("Act").

APPLICANT: Columbia International Stock Fund, Inc.

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from the provisions of section 12(d)(3) of the Act and rule 12d3-1 thereunder.

SUMMARY OF APPLICATION: Applicant seeks a conditional order under section 6(c) of the Investment Company Act of 1940 exempting it from the provisions of section 12(d)(3) of the Act and rule 12d3-1 thereunder to the extent necessary to permit applicant to invest in equity and convertible securities issued by foreign companies that, in each of their most recent fiscal years, derived more than 15% of their gross revenues from their activities as a broker, dealer, underwriter or investment adviser, provided such investments meet the conditions in the proposed amendments to rule 12d3-1.

FILING DATE: The Application was filed on July 8, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 25, 1992, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, 1301 SW Fifth Avenue, PO Box 1350, Portland, Oregon 97207.

FOR FURTHER INFORMATION CONTACT: Nicholas D. Thomas, Staff Attorney, at (202) 504-2263, or Elizabeth G. Osterman, Branch Chief, at (202) 272-3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an Oregon corporation and an open-end diversified management investment company registered under the Act. Applicant's investment adviser is Columbia Funds Management Company.

2. Applicant seeks relief from section 12(d)(3) of the Act and rule 12d3-1 thereunder to be able to invest in the equity or convertible securities of foreign issuers that, in their most recent fiscal year, derived more than 15% of their gross revenues from their activities as a broker, dealer, underwriter or investment adviser ("Foreign Securities Companies").

Applicant's Legal Analysis

1. Section 12(d)(3) of the Act prohibits an investment company from acquiring any security issued by any person who is a broker, dealer, underwriter, or investment adviser. Rule 12d3-1 provides an exemption from section 12(d)(3) of the Act for investment companies acquiring securities of an issuer that, in its most recent fiscal year, derived more than fifteen percent of its gross revenues from securities-related activities, provided the acquisitions satisfy certain conditions set forth in the rule.

2. Subparagraph (b)(4) of rule 12d3-1 provides that "any equity security of the issuer * * * [must be] a 'margin security' as defined in Regulation T promulgated by the Board of Governors of the Federal Reserve System." "Margin Security" status is generally available only to securities traded in the United States. Because applicant proposes to invest in equity securities, as defined in section 3(a)(11) of the Securities Exchange Act of 1934, of Foreign Securities Companies that are not "margin stocks" within the meaning of Regulation T, applicant is unable to take advantage of the exemption provided by rule 12d3-1.

3. Under the proposed amendments to rule 12d3-1, an investment company

would be permitted to acquire the equity securities of a Foreign Securities Company that are not "margin securities" if the securities meet liquidity and other criteria comparable to those applicable to equity securities of United States securities-related businesses. The criteria, as set forth in the proposed amendment, "are based particularly on the policies that underlie the requirements for inclusion on the list of over-the-counter margin stocks." Investment Company Act Release No. 17096 (Aug. 3, 1989)

Applicant's Condition

Applicant agrees that the following condition be imposed in any order of the SEC granting the requested relief:

Applicant will comply with the provisions of the proposed amendments to rule 12d3-1, (Investment Company Act Release No. 17096 (Aug. 3, 1989); 54 FR 33027 (Aug. 11, 1989)), and as such amendments may be repropounded, adopted, or amended.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 92-18863 Filed 8-7-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18879; 811-1340]

MidAmerica High Growth Fund, Inc.; Application

August 4, 1992.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: MidAmerica High Growth Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on February 28, 1992 and amended on July 9, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 31, 1992, and should be accompanied by proof of service on applicant, in the form of an affidavit or,

for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, 4333 Edgewood Road NE., Cedar Rapids, Iowa 52499.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 272-3026, or Nancy M. Rappa, Branch Chief, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end diversified investment company that was organized as a corporation under the laws of Maryland. On November 15, 1965, applicant filed a registration statement pursuant to section 8(b) of the Act. A registration statement under the Securities Act of 1933 was filed on November 15, 1965. The registration statement was declared effective and the initial public offering commenced on April 4, 1966.

2. On June 20, 1990, in reliance upon rule 17a-8 of the Act, applicant's board of directors approved a merger into AEGON USA Capital Appreciation Portfolio ("Aegon"). On September 24, 1990, applicant mailed proxy materials to its shareholders. At a meeting held on October 30, 1990, applicant's shareholders approved the merger.

3. On December 1, 1990, the outstanding shares of applicant were converted into shares of Aegon on the basis of their relative net asset value, and the assets and liabilities of applicant became assets and liabilities of Aegon. Each share of common stock of applicant which was issued and outstanding immediately prior to the merger was converted by the merger into one share of common stock of Aegon, with the same net asset value.

4. Expenses incurred in connection with the merger totalled approximately \$150,256, and were borne by MidAmerica Management Corporation, the investment adviser of applicant.

5. There are no security holders to whom distributions in complete liquidation of their interests have not

been made. Applicant has no debts or other liabilities that remain outstanding. Applicant is not a party to any litigation or administrative proceeding.

6. The applicant ceased to have any legal existence under the laws of Maryland upon the filing of articles of merger with the state of Maryland on November 29, 1990.

7. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 92-18865 Filed 8-7-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18877; 811-4153]

MidAmerica High Yield Fund, Inc.; Application

August 4, 1992.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: MidAmerica High Yield Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on February 26, 1992 and amended on July 9, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 31, 1992, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 4333 Edgewood Road NE., Cedar Rapids, Iowa 52499.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 272-3026, or Nancy M. Rappa, Branch Chief, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end diversified investment company that was organized as a corporation under the laws of Maryland. On January 31, 1985, applicant filed a registration statement pursuant to section 8(b) of the Act. A registration statement under the Securities Act of 1933 was filed on January 31, 1985. The registration statement was declared effective and the initial public offering commenced on June 14, 1985.

2. On June 20, 1990, in reliance upon rule 17a-8 of the Act, applicant's board of directors approved a merger into AEGON USA High Yield Portfolio ("Aegon"). On September 24, 1990, applicant mailed proxy materials to its shareholders. At a meeting held on October 30, 1990, applicant's shareholders approved the merger.

3. On December 1, 1990, the outstanding shares of applicant were converted into shares of Aegon on the basis of their relative net asset value per share, and the assets and liabilities of applicant became assets and liabilities of Aegon. Each share of common stock of applicant which was issued and outstanding immediately prior to the merger was converted by the merger into one share of common stock of Aegon, with the same net asset value.

4. Expenses incurred in connection with the merger totalled approximately \$150,256, and were borne by MidAmerica Management Corporation, the investment adviser of applicant.

5. There are no security holders to whom distributions in complete liquidation of their interests have not been made. Applicant has no debts or other liabilities that remain outstanding. Applicant is not a party to any litigation or administrative proceeding.

6. The applicant ceased to have any legal existence under the laws of Maryland upon the filing of articles of merger with the state of Maryland on November 29, 1990.

7. Applicant is not now engaged, nor

does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-18867 Filed 8-7-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18878; 811-4217]

MidAmerica Tax-Exempt Bond Fund, Inc.; Application

August 4, 1992.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: MidAmerica Tax-Exempt Bond Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on February 26, 1992 and amended on July 9, 1992.

HEARING OR NOTIFICATION OF HEARING:

An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 31, 1992, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 4333 Edgewood Road NE, Cedar Rapids, Iowa 52499.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 272-3026, or Nancy M. Rappa, Branch Chief, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end diversified investment company that was organized as a corporation under the laws of Maryland. On November 9, 1984, applicant filed a registration statement pursuant to section 8(b) of the Act. A registration statement under the Securities Act of 1933 was filed on November 9, 1984. The registration statement was declared effective on March 1, 1985, and public offering commenced on April 1, 1985.

2. On June 20, 1990, in reliance upon rule 17a-8 of the Act, applicant's board of directors approved a merger into AEGON USA Tax-Exempt Portfolio ("Aegon"). On September 24, 1990, applicant mailed proxy materials to its shareholders. At a meeting held on October 30, 1990, applicant's shareholders approved the merger.

3. On December 1, 1990, the outstanding shares of applicant were converted into shares of Aegon on the basis of their relative net asset value per share, and the assets and liabilities of applicant became assets and liabilities of Aegon. Each share of common stock of applicant which was issued and outstanding immediately prior to the merger was converted by the merger into one share of common stock of Aegon, with the same net asset value.

4. Expenses incurred in connection with the merger totalled approximately \$150,256, and were borne by MidAmerican Management Corporation, the investment adviser of applicant.

5. There are no securityholders to whom distributions in complete liquidation of their interests have not been made. Applicant has no debts or other liabilities that remain outstanding. Applicant is not a party to any litigation or administrative proceeding.

6. The applicant ceased to have any legal existence under the laws of Maryland upon the filing of articles of merger with the state of Maryland on November 29 1990.

7. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-18866 Filed 8-7-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-25596]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

July 31, 1992.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by August 24, 1992 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

General Public Utilities Corporation et al. (70-7942)

General Public Utilities Corp. ("GPU"), a registered holding company, General Portfolios Corp. ("GPC"), a wholly owned subsidiary company of GPU, Energy Initiatives, Inc. ("EII"), a wholly owned subsidiary company of GPC, Geddes Cogeneration Corp. ("Geddes"), a wholly owned subsidiary of EII, and Onondaga Cogeneration Limited Partnership (the "Partnership"), a wholly owned subsidiary of Geddes and a New York limited partnership (collectively, "Applicants"), all located at One Gatehall Drive, Parsippany, New Jersey, 07054, have filed with the Commission a post-effective amendment under sections 6 and 7 to their application-declaration filed under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and rules 45 and 50(a)(5) thereunder.

By order dated June 15, 1992 (HCAR No. 25555) ("June Order"), the Commission authorized the Applicants,

among other things, to undertake certain financings related to construction of a 79.9 MW cogeneration facility being constructed in Geddes, New York ("Project"), that is a qualifying facility under the Public Utility Regulatory Policies Act of 1978. Pursuant to the June Order, the Partnership entered into a financing agreement ("Financing Agreement") for Project construction on June 17, 1992 with Mellon Bank, N.A., Westpac Banking Corporation (the "Bank Lenders"), and John Hancock Mutual Life Insurance Company and John Hancock Variable Life Insurance Company (the "Institutional Lenders"). On that date, the Institutional Lenders, as provided in the Financing Agreement, made an initial advance ("Initial Advance") of \$38 million of the total borrowings under the Financing Agreement of \$89.5 million through the acquisition of an equal amount of project notes by the Onondaga County Industrial Development Authority ("OCIDA"). The balance of the construction financing will be provided through loans made by the Bank Lenders.

Under the Financing Agreement, the Bank Lenders have committed to provide 53.66% (29.18% for Mellon Bank and 24.48% for Westpac Banking Corporation) and the Institutional Lenders have committed to provide 46.34% of the construction and term loan advances. To date, the Institutional Lenders, by providing the Initial Advance, have met their initial commitments under the Financing Agreement. In order to insure that, in the event of a default under the project financing agreements, the Institutional Lenders and the Bank Lenders assume their *pro rata* share of the total loans then outstanding—notwithstanding a disproportionate amount of Institutional Advances which may be outstanding—the Bank Lenders have agreed to provide the Institutional Lenders with letters of credit ("True-Up LOCs"). The purpose of the True-Up LOCs is to secure the Bank Lenders' commitment to fund their *pro rata* share of the aggregate loans made in the event of a default by the Partnership, to the extent the Bank Lenders have not yet made such loans. Thus, in the event of a default, the Institutional Lenders would be entitled to draw on the True-Up LOCs, to the extent of the Bank Lenders unfunded, *pro rata* share of their commitments. The proceeds of any True-Up LOC drawing would be applied by the Institutional Lenders to prepay a like amount of Institutional loans, i.e., loans made to OCIDA which are guaranteed by the Partnership.

Accordingly, the Partnership now proposes to enter into True-Up LOC repayment agreements with the Bank Lenders ("Repayment Agreement"). Under the Repayment Agreement, if the Institutional Lenders do draw on the True-Up LOCs, the Partnership would be obligated to repay the Bank Lenders in the amount of any such draw. The total repayment obligations of the Partnership under the Financing Agreement to the Institutional and Bank Lenders would, however, remain unchanged.

In the event of a default under the Financing Agreement, the letter of credit provided by Geddes to secure its equity commitments in the Partnership ("Equity LOC"), in the amount \$13.5 million, would be available to the Bank Lenders to repay a portion of the Initial Advance. Accordingly, the maximum aggregate face amount of the True-Up LOCs will be \$13.15 million (\$7.15 million for Mellon Bank and \$6 million for Westpac Banking Corporation), which represents the Bank Lenders' aggregate percentage commitment (53.66%) of the portion of the \$38 million Initial Advance (i.e., \$24.5 million) not secured by the Equity LOC provided by Geddes.

Each True-Up LOC would expire by its terms at such time as the Bank Lenders have made construction loan advances in an amount equal to the Initial Advance (i.e., \$38 million) made by the Institutional Lenders and, in any event, not later than December 31, 1994. The Partnership would pay an annual True-Up LOC commission to each Bank Lender in the amount of 1.25% of the amount available to be drawn on such Bank Lender's True-Up LOC. Drawings under the True-Up LOC would bear interest at 3% above the Mellon Bank, N.A. prime rate, as in effect from time to time.

In addition, in order to take advantage of short-term interest cost savings, the Partnership proposes to enter into a short-term swap arrangement with the Bank Lenders ("Short-Term Swap") for the amount of the Initial Advance (\$38 million). The Short-Term Swap will allow for conversion of the fixed interest on the Initial Advance into a variable rate which will be not in excess of the London Inter-bank Offering Rate ("LIBOR") plus 5½%. The Short-Term Swap would be established for a period of up to 24 months after which the fixed rate of 10.10% would become effective for the remainder of the term. Based upon the LIBOR in effect on June 26, 1992 (3.875%), the Short-Term Swap rate would be 9.375%. On this basis, the interest cost savings resulting from the

Short-Term Swap would be approximately \$550,000.

System Fuels, Inc., et al. (70-8001)

System Fuels, Inc. ("SFI"), 225 Baronne Street, New Orleans, Louisiana 70112, a fuel supply company jointly owned by Arkansas Power & Light Company ("AP&L"), 425 West Capitol, 40th Floor, Little Rock, Arkansas 72201, Louisiana Power & Light Company, 317 Baronne Street, New Orleans, Louisiana 70112, Mississippi Power & Light Company, 308 East Pearl Street, Jackson, Mississippi 39201 and New Orleans Public Service Inc., 317 Baronne Street, New Orleans, Louisiana 70112 (all companies collectively, "Applicants"), each an electric public utility subsidiary of Entergy Corporation, a registered holding company, have filed a post-effective amendment to their application filed under sections 9(a) and 10 of the Act.

By order dated July 7, 1992 (HCAR No. 25576) ("July 1992 Order"), the Commission authorized AP&L to assume SFI's existing rights and obligations under several leases of coal railroad cars. The Applicants now request that the Commission issue a supplemental order extending the effectiveness of the July 1992 Order for a period of one year.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 92-18862 Filed 8-7-92; 8:45 am]
BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Application of the International Air Transport Association for Approval of Revised Traffic Conference Provisions

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice of Procedural Order 92-8-9, in Docket 46928.

SUMMARY: The Department of Transportation has issued an order ruling on various procedural motions filed in Docket 46928. The Department granted the motions of the U.S. Department of Justice and the International Organization of Consumers' Unions to file otherwise unauthorized documents in the form of Reply Comments, filed on May 14 and June 2, 1992, respectively. The Department granted interested persons 75 days to file responsive pleadings to

these Reply Comments. The Department also granted all parties and potential parties interim access to the materials submitted by the Department of Justice in Confidential Appendix to its Reply Comments, upon the filing of affidavits to protect their confidentiality and to use them only for the purpose of participating in this proceeding. The materials are available in the Department's Documentary Services Division in Washington, DC.

DATES: Persons wishing to file responsive comments should do so no later than October 19, 1992.

ADDRESSES: Responsive Comments should be filed in Docket 46928 and addressed to the Documentary Services Division, (C-55, Room 4107), U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590.

Dated: August 4, 1992.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 92-18884 Filed 8-7-92; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: August 4, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515-0155.

Form Number: None.

Type of Review: Reinstatement.

Title: Approval of Commercial Gaugers and Accreditation of Commercial Laboratories.

Description: Individuals or companies desiring Customs recognition as approved commercial gaugers or accredited commercial testing laboratories may apply to Customs by letter. This recognition is required for acceptance of certain gauge or test results by Customs.

Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents/Recordkeepers: 10.

Estimated Burden Hours Per

Respondent/Recordkeeper: 5 hours.

Frequency of Response: On occasion.

Estimated Total Reporting/

Recordkeeping Burden: 119 hours.

Clearance Officer: Ralph Meyer (202)

927-1552, U.S. Customs Service, Paperwork Management Branch, room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229.

OMB Reviewer: Milo Sunderhauf (202)

395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 92-18879 Filed 8-7-92; 8:45 am]

BILLING CODE 4820-02-M

Public Information Collection Requirements Submitted to OMB for Review

Date: August 3, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-1148.

Regulation ID Number: EE-113-90

Temporary and Final.

Type of Review: Extension.

Title: Employee Businesses Expenses-Reporting and Withholding on Employee Business Expense Reimbursements and Allowances (T.D. 8324).

Description: These temporary and final regulations provide rules concerning the taxation of and reporting withholding on employee business expense reimbursements and other expense allowance arrangements.

Respondents: Individuals or households, State or local governments, Farms, Businesses or other for-profit, Federal agencies or employees, Non-profit

institutions, Small businesses or organizations.

Estimated Number of Recordkeepers: 1,419,456.

Estimated Burden Hours Per

Recordkeeper: 30 minutes.

Frequency of Response: Other.

Estimated Total Recordkeeping Burden: 709,728 hours.

Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 92-18880 Filed 8-7-92; 8:45 am]

BILLING CODE 4830-01-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Joined Colors: Meaning and Decoration in Chinese Porcelain" (see list ¹), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Arthur M. Sackler Gallery, Smithsonian Institution, Washington, DC, from on or about November 16, 1992, to on or about December 31, 1993, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register**.

Alberto J. Mora,

General Counsel.

[FR Doc. 92-18913 Filed 8-7-92; 8:45 am]

BILLING CODE 8230-01-M

¹ A copy of this list may be obtained by contacting Mr. R. Wallace Stuart of the Office of the General Counsel of USIA. The telephone number is 202/619-5078, and the address is room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395-7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before September 9, 1992.

Dated: July 30, 1992.

By direction of the Secretary.

B. Michael Berger,

Director, Records Management Service.

Extension

1. Supplemental Physical Examination Report, VA Form 29-8100 (Series).

2. The forms are used to obtain complete information as to physical and/or mental condition of a veteran who has submitted an application for insurance or reinstatement.

3. Individuals or households.

4. 1,080 hours.

5. 45 minutes.

6. On occasion.

7. 1,440 respondents.

[FR Doc. 92-18936 Filed 8-7-92; 8:45 am]

BILLING CODE 8320-01-M

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting

documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395-7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before September 9, 1992.

Dated: July 30, 1992.

By direction of the Secretary.

B. Michael Berger,

Director, Records Management Service.

Extension

1. Entitlement Certification (Under chapter 30, 32, or 35, title 38 U.S.C. or chapter 106, title 10, U.S.C., VA Forms 22-1999, 22-1999-1, and 22-1999-2.

2. These forms are used by schools and employers to report the enrollment of veterans, servicepersons, selected reservists, and other eligible persons in approved programs or education training. The information requested is necessary to determine the correct rate of payment.

3. Individuals or households; States or local governments; Farms; Business or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations.

4. 128,873 hours.

5. 10 minutes.

6. On occasion; School term or semester.

7. 7,435 respondents.

[FR Doc. 92-18937 Filed 8-7-92; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register

Vol. 57, No. 154

Monday, August 10, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of August 10, 17, 24, and 31, 1992.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of August 10

Wednesday, August 12

11:30 a.m.

Affirmation/Discussion and Vote (Public Meeting)

a. Petition for Late Intervention and Motion to Reopen the Record in the Comanche Peak Proceedings (Tentative)

b. City of Cleveland's Appeal of the Atomic Safety and Licensing Board's Prehearing Conference Order (LBP-91-38) (Tentative)

c. Safety Light Corporation—Review of Licensing Board Decision to Consolidate Proceedings (Tentative)

Week of August 17—Tentative

Tuesday, August 18

11:30 a.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of August 24—Tentative

Wednesday, August 26

11:30 a.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of August 31—Tentative

Tuesday, September 1

3:00 p.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

Thursday, September 3

1:00 p.m.

Briefing by EPRI on Status of EPRI Design Requirements Document for Advanced Light Water Reactors (Public Meeting)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meeting Call (Recording)—(301) 504-1292.

CONTACT PERSON FOR MORE

INFORMATION: William Hill (301) 504-1661.

Dated: August 5, 1992.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 92-19049 Filed 8-6-92; 2:41 pm]

BILLING CODE 7590-01-M

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 9:00 a.m., Tuesday, August 11, 1992.

PLACE: Room 410, 1825 K Street, NW., Washington, DC 20006.

STATUS: Open Meeting.

MATTERS TO BE CONSIDERED: Comments submitted pertaining to the Commission's proposed revision of certain of its Rules of Procedure published on May 12, 1992 at 57 FR 20220-20234.

CONTACT PERSON FOR MORE

INFORMATION: Earl R. Ohman, Jr., (202) 634-4015.

Dated: August 6, 1992.

Earl R. Ohman, Jr.,

General Counsel.

[FR Doc. 92-19055 Filed 8-10-92; 2:42 pm]

BILLING CODE 7600-01-M

Corrections

Federal Register

Vol. 57, No. 154

Monday, August 10, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 318

[Docket No. 91-094]

Fruits and Vegetables From Hawaii, Puerto Rico, and the Virgin Islands

Correction

In proposed rule document 92-16149 beginning on page 31130 in the issue of Tuesday, July 14, 1992, make the following corrections:

1. On page 31133, in the first column, the sentence beginning in the 8th line from the bottom, should read as follows: "Typically, however, sea containers are not designed to be transloaded into aircraft, and we are unaware of any situation where loading from a ship directly into an aircraft, or an aircraft directly into a ship is possible."

2. On page 31134, in the second column, in the third line from the bottom, "5" should read "7".

§ 318.13-17 [Corrected]

3. On page 31139, in the first column, in § 318.13-17(m), in the ninth line insert "transloads," between "unloads," and "transports".

BILLING CODE 1505-01-D

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1942

RIN 0575-AB28

Rural Business Enterprise Grants and Television Demonstration Grants

Correction

In rule document 92-17597 beginning on page 33097 in the issue of Monday,

July 27, 1992, make the following correction:

§ 1942.305 [Corrected]

On page 33099, in the third column, in § 1942.305(a)(3), in the third line, "and" should be removed.

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 685

[Docket No. 920776-2176]

RIN 0648-AE36

Pelagic Fisheries of the Western Pacific Region

Correction

In proposed rule document 92-17376 beginning on page 32952 in the issue of Friday, July 24, 1992, make the following corrections:

1. On page 32954, in the first column, in the second full paragraph, in the ninth line, after "NMFS" insert "Southwest" and in the fifth line from the bottom of this paragraph, after "ADDRESSES" the quotes should be removed.

§ 611.81 [Corrected]

2. On page 32955, in the 1st column, in § 611.81(b), the 14th line, should read "Mahimahi means 'dolphin fish'" and in the 16th line, "Equisetis" should read "equisetis".

BILLING CODE 1505-01-D

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Regulatory Treatment of Deferred Tax Assets

Correction

In notice document 92-18245 beginning on page 34135 in the issue of Monday, August 3, 1992, make the following correction:

On page 34135, in the second column, under **DATES**, in the second line, "September 2, 1990." should read "September 2, 1992."

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 92N-0136]

Proposed Implementation of International Conference on Harmonisation Consensus Regarding New Drug Applications; Proposed Implementation Document; Availability

Correction

In notice document 92-8401 beginning on page 13105 in the issue of Wednesday, April 15, 1992, make the following correction:

On page 13106, in the first column, in the sixth line from the bottom, "(20)" should read "(2)".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6932

[AK-932-4214-10; F-14223]

Modification of Public Land Order No. 5150, as Amended, for Selection of Lands by the State of Alaska; AK

Correction

In the correction document 92-13983 appearing on page 31404 in the issue of Wednesday, July 15, 1992, make the following corrections:

1. On page 31404, in the second column, under paragraph designation c., in the fifth line, "third" was misspelled.

2. On the same page, in the same column, under paragraph designation 2.a., in the last line, "read Tps. N." should read "read Tps. 1 N.,".

BILLING CODE 1505-01-D

**INTERSTATE COMMERCE
COMMISSION****49 CFR Part 1109**

[Ex Parte No. 55 (Sub No. 873)]

**Use of Alternative Dispute Resolution
Procedures in Commission
Proceedings and Those in Which the
Commission is a Party***Correction*

In rule document 92-17290 beginning on page 32451 in the issue of Wednesday, July 22, 1992, make the following correction:

§ 1109.2 [Corrected]

On page 32452, in the first column, in § 1109.2, in the eighth line "referred" should read "referred".

BILLING CODE 1505-01-D

**DEPARTMENT OF VETERANS
AFFAIRS****38 CFR Part 21**

RIN 2900-AE46

**Veterans Education; the Veterans
Education and Employment
Amendments of 1989 and Dependents'
Educational Assistance***Correction*

In rule document 92-15673 beginning on page 29798 in the issue of Tuesday, July 7, 1992, make the following correction:

§ 21.4270 [Corrected]

On page 29804, in the second column, in § 21.4270(b)(6), in the third line, remove "40".

BILLING CODE 1505-01-D

Federal Register

Monday
August 10, 1992

Part II

Department of Labor

Occupational Safety and Health
Administration

29 CFR Parts 1910 and 1926
Occupational Exposure to 4,4'
Methylenedianiline (MDA); Final Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910 and 1926

(Docket No. H040)

Occupational Exposure to 4,4'-Methylenedianiline (MDA)

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.
ACTION: Final rule.

SUMMARY: By this document, the Occupational Safety and Health Administration is promulgating new standards regulating exposure to MDA. The basis for this action is a determination by the Assistant Secretary, based on animal and human data, that exposure to MDA at the current occupational exposure levels causes adverse effects on employee health including an increased risk of cancer and that limiting occupational exposure to MDA to an eight-hour time-weighted average (TWA) of 10 parts per billion (ppb), establishing a short-term exposure limit (STEL) of 100 ppb, and implementing associated provisions will significantly reduce this risk. In addition to establishing permissible exposure limits (PELs) for MDA, this regulation includes requirements such as medical surveillance, exposure monitoring, hygiene facilities, engineering controls and work practices, proper respirator use, and recordkeeping. An action level of 5 ppb is included in this final standard as a mechanism for exempting employers from the obligation to comply with certain requirements, such as employee exposure monitoring, in instances where the employer can demonstrate that employee exposures are at or below the action level.

The standards apply to all industries covered by the OSH Act including general industry, construction, and maritime.

For the most part, the provisions adopted by OSHA in these final regulations were recommended by the MDA Mediated Rulemaking Advisory Committee (Committee).

EFFECTIVE DATE: These final rules shall become effective on September 9, 1992.

ADDRESSES: In compliance with 28 U.S.C. 2112(a), the Agency designates for receipt of petitions for review of the standard, the Associate Solicitor for Occupational Safety and Health, Office of the Solicitor, room S-4004, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Any such petitions for review must be filed not later than the 59th day

following the promulgation of the standard. See section 6(f) of the OSH Act; 29 CFR 1911.18(d) and *United Mine Workers of America v. Mine Safety and Health Administration*, 900 F.2d 384 (D.C. Cir. 1990).

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, Director Office of Public Affairs, OSHA, rm. N-3641, 200 Constitution Avenue, NW., Washington, DC, 20210, Telephone (202) 523-8151. Copies of this document may be obtained two weeks after the publication date from the OSHA Publication Office, rm. N-3101, at the above address, or by calling (202-523-9667) or at any OSHA regional or area office.

SUPPLEMENTARY INFORMATION:**Table of Contents**

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- Appendix A to § 1910.1050—Substance Data Sheet For 4,4'-Methylenedianiline
- Appendix B to § 1910.1050—Substance Technical Guidelines, MDA
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- Appendix D to § 1910.1050—Sampling and Analytical Methods for MDA Monitoring and Measurement Procedures
- Appendix E to § 1910.1050—Qualitative and Quantitative Fit Testing Procedures

Construction Industry

- Appendix A to § 1926.60—Substance Data Sheet For 4,4'-Methylenedianiline
- Appendix B to § 1926.60—Substance Technical Guidelines, MDA
- Appendix C to § 1926.60—Medical Surveillance Guidelines for MDA

MDA

- Appendix D to § 1926.60—Sampling and Analytical Methods for MDA Monitoring and Measurement Procedures

Appendix E to § 1926.60—Qualitative and Quantitative Fit Testing Procedures

I. Introduction

The standards apply to all occupational exposures to MDA and include a standard in 29 CFR 1910 and 29 CFR 1926. Occupational exposure to MDA in construction is covered by a separate standard. Coverage includes exposures which occur in maritime, primary chemical manufacture, reprocessing, filament winding, potting and encapsulation, etc.

The standard excludes mixtures containing less than 0.1% MDA and also excludes "finished articles containing MDA" as defined.

II. Pertinent Legal Authority

Authority for issuance of this standard is found primarily in sections 4, 6(b), 8(c), and 8(g)(2) of the Occupational Safety and Health Act of 1970 (the Act), 29 U.S.C. 653, 655(b), 657(c), and 657(g)(2). Section 6(b)(5) governs the issuance of occupational safety and health standards dealing with toxic materials or harmful physical agents. Section 3(8) of the Act, 29 U.S.C. 652(8), defines an occupational safety and health standard as:

... a standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment.

The Supreme Court has said that section 3(8) applies to:

... all permanent standards promulgated under the Act and requires the Secretary, before issuing any standard, to determine that it is reasonably necessary and appropriate to remedy a significant risk of material health impairment. *Industrial Union Department v. American Petroleum Institute*, 448 U.S. 607 (1980).

The "significant risk" determination constitutes a finding that, absent the change in practices mandated by the standard, the workplaces in question would be "unsafe" in the sense that workers would be threatened with a significant risk of harm. *Id.* at 642. A significant risk finding, however, does not require mathematical precision or anything approaching scientific certainty if the "best available evidence" does not warrant that degree of proof. *Id.* at 655-656; 29 U.S.C. 655 (b)(5). Rather, the Agency may base its finding largely on policy considerations and has considerable leeway with the kinds of assumptions it applies in interpreting the data supporting it. *Id.* 655-656; 29 U.S.C. 655(b)(5). The Court's opinion indicates that risk assessments, which may involve mathematical

estimates with some inherent uncertainties, are a means of demonstrating the existence of significant risk.

After OSHA has determined that a significant risk exists and that such risk can be reduced or eliminated by the proposed standard, it must set the standard "which most adequately assures, to the extent feasible on the basis of the best available evidence, that no employee will suffer material impairment of health * * *". Section 6(b)(5) of the Act. The Supreme Court has interpreted this section to mean that OSHA must enact the most protective standard necessary to eliminate a significant risk of material health impairment, subject to the constraints of technological and economic feasibility. *American Textile Manufacturers Institute, Inc. v. Donovan*, 452 U.S. 490 (1981). The Court held that "cost-benefit analysis is not required by the statute because feasibility analysis is." *Id.* at 509.

Authority to issue this standard is also found in section 8(c) of the Act. In general, this section requires the Secretary to require employers to make, keep, and preserve records regarding activities related to the Act. In particular, section 8(c)(3) gives the Secretary authority to require employers to "maintain accurate records of employee exposure to potentially toxic materials or harmful physical agents which are required to be monitored or measured under section 6." Provisions of OSHA standards which require the making and maintenance of records of medical examinations, exposure monitoring, and the like are issued pursuant to section 8(c) of the Act.

The Secretary's authority to issue this standard is further supported by the general rulemaking authority granted in section 8(g)(2) of the Act. This section empowers the Secretary to "prescribe such rules and regulations as he may deem necessary to carry out (his) responsibilities under this Act"—in this case as part of or ancillary to a section 6(b) standard. The Secretary's responsibilities under the Act are defined largely by its enumerated purposes, which include:

Encouraging employers and employees in their efforts to reduce the number of occupational safety and health hazards at their places of employment, and to stimulate employers and employees to institute new and to perfect existing programs for providing safe and healthful working conditions (29 U.S.C. 651(b)(1));

Setting mandatory occupational safety and health standards applicable to business affecting interstate commerce,

and by creating an Occupational Safety and Health Review Commission for carrying out adjudicatory functions under the Act (29 U.S.C. 651(b)(3));

Building upon advances already made through employee and employer initiative for providing safe and healthful working conditions (29 U.S.C. 651(b)(4));

Providing for the development and promulgation of occupational safety and health standards (29 U.S.C. 651(b)(9));

Providing for appropriate reporting procedures with respect to occupational safety and health which procedures will help achieve the objectives of this Act and accurately describe the nature of the occupational safety and health problem (29 U.S.C. 651(b)(12));

Exploring ways to discover latent diseases, establishing causal connections between diseases and work in environmental conditions * * *. (29 U.S.C. 651(b)(6));

Encouraging joint labor-management efforts to reduce injuries and diseases arising out of employment (29 U.S.C. 651(b)(13)); and

Developing innovative methods, techniques, and approaches for dealing with occupational safety and health problems (29 U.S.C. 651(b)(5)).

Because the MDA standards are reasonably related to these statutory goals, the Secretary finds that these standards are necessary to carry out her responsibilities under the Act.

III. Events Leading to the Final Standard

EPA issued a notice under Section 4(f) of the Toxic Substances Control Act (TSCA) on April 27, 1983 (48 FR 19078) which indicated that MDA presents a significant cancer risk to humans. EPA was then required to either initiate "appropriate action" or announce that the risk was not "unreasonable."

The Section 4(f) notice was based on a draft study undertaken by the National Toxicology Program (NTP). The study demonstrated that the dihydrochloride salt of MDA is carcinogenic in both sexes of rats and mice at two oral dose levels. This study plus the following factors formed the basis for the Section 4(f) notice: (1) A lack of any mandatory workplace standard; (2) the apparent inadequacy of protection afforded at the American Conference of Governmental Industrial Hygienists (ACGIH) recommended threshold limit value (0.1 parts per million (ppm)); (3) evidence that some processors may be exceeding even the ACGIH limit; and (4) evidence that several thousand workers may be exposed.

The "appropriate action" taken by EPA was the issuance of an Advance

Notice of Proposed Rulemaking (ANPR) on September 20, 1983 (48 FR 42898). The ANPR announced the joint effort by EPA and OSHA to initiate regulatory action to determine and implement the most effective means of controlling occupational exposure to MDA. At the time of the issuance of the ANPR, only limited data were available on exposure levels and the number of workers potentially exposed. The ANPR requested detailed information on the operations used to manufacture and process MDA; the potential for exposure at each stage, including air and work surface monitoring data; and descriptions of workplace practices. The second area of inquiry was the production and use of MDA. Detailed descriptions of the uses of MDA and updated information of the identity of processors and users was sought. The third area of inquiry was the availability, costs, and the suitability, and toxicity of substitutes for MDA. Finally, information was sought on methods of controlling exposure. The ANPR invited views and data from interested parties in any of these areas.

In response to the ANPR, comments were received from four parties: Diamond Shamrock; National Resources Defense Council, Inc.; DuPont; and CMA. These comments have been analyzed and where appropriate are reflected in this document.

On July 5, 1985, EPA published a Federal Register notice, in accordance with section 9 TSCA provisions (50 FR 27674) which described the occupational risks associated with worker exposure to MDA and requested that OSHA respond to EPA and indicate what regulatory activity would be implemented, if any. Under section 9(a)(2) of TSCA, EPA was prohibited from taking any regulatory action pending a response from OSHA.

In response (51 FR 6748, February 26, 1986), OSHA determined that there is a reasonable basis to believe that the manufacture and use of MDA presents a significant risk to the health of exposed workers and that the risk described by EPA may be eliminated or reduced to a significant extent by a workplace standard which regulates workers exposure. Further, OSHA determined on the basis of preliminary data, that the adoption of an occupational standard for worker exposure to MDA is economically and technologically feasible.

In the course of considering an appropriate regulatory action under the Occupational Safety and Health Act of 1970 (84 Stat. 1590; 29 U.S.C. 655) ("OSH Act"), OSHA examined various

regulatory scenarios before determining the process which might be followed in developing a comprehensive regulation for occupational exposure to MDA. The Administrative Conference of the United States (ACUS) had recently studied the rulemaking process of various federal agencies and found that:

The complexity of government regulation has increased greatly compared to that which existed when the Administrative Procedure Act (APA) was enacted, and this complexity has been accompanied by a formalization of the rulemaking process beyond the brief, expeditious notice and comment procedures envisioned by section 553 of the APA. Procedures in addition to notice and comment may, in some instances, provide important safeguards against arbitrary or capricious decisions by agencies and help ensure that agencies develop sound factual basis for the exercise of the discretion entrusted them by Congress, but the increased formalization of the rulemaking process has also had adverse consequences. The participants, including the agency, tend to develop adversarial relationships with each other causing them to take extreme positions, to withhold information from one another, and to attack the legitimacy of opposing positions. Because of the adversarial relationships, participants often do not focus on creative solutions to problems, ranking of the issues involved in a rulemaking, or the important details involved in a rule. Extensive factual records are often developed beyond what is necessary. Long periods of delay result and participation in rulemaking proceedings can become needlessly expensive. Moreover, many participants perceive their roles in the rulemaking proceeding more as positioning themselves for the subsequent judicial review than as contributing to a solution on the merits at the administrative level. Finally, many participants remain dissatisfied with the policy judgments made at the outcome of rulemaking proceedings.

(Recommendation 82-4 "Procedures for Negotiating Proposed Regulations," 47 FR 30708, June 18, 1982).

Therefore, ACUS recommended that agencies consider using regulatory mediation, in which the parties in interest identify the major issues, gauge their importance, identify the information necessary to resolve the issues, and develop a rule that is acceptable to the respective interests, all within the contours of the regulatory agency's statute.

In considering whether this approach would be suitable in developing regulations controlling workplace exposure to MDA, OSHA considered the selection criteria adopted by the Environmental Protection Agency. (See 49 FR 17576, 17579; April 24, 1984.) OSHA concluded that MDA met the selection criteria for mediation: the regulatory effort was at the pre-proposal phase of development; affected parties

were relatively few in number and readily identifiable; there were indications that affected parties would mediate in good faith; and sufficient information was available to resolve key issues. Thus, OSHA employed mediated rulemaking in developing an occupational standard for worker exposure to MDA.

A number of parties interested in OSHA affairs have expressed concern regarding the use of mediated rulemaking in developing complex health regulations. Strictly speaking, it appears inappropriate to suggest that human suffering and lives become the trade off items in a mediation attempt. The Agency's use of mediated rulemaking in this instance did not anticipate that would be the methodology of these endeavors. Instead, OSHA expected to produce a consensus recommendation on the various aspects or issues involved in developing a complex health standard. This differs from the typical labor-management negotiations where a limited number of issues must be resolved and bargaining or trade-off become the method to form a compromise. The key difference involves the final product expected. On the one hand, a compromise is reached; on the other hand, a consensus is achieved.

OSHA indicated in its Federal Register notice of October 22, 1985 (50 FR 42789) that Mediated Rulemaking would be used to assist OSHA in its MDA rulemaking activities. This notice also set forth the basic concepts of negotiated rulemaking and outlined the participant selection criteria which OSHA expected to use in establishing an MDA Advisory Committee.

OSHA established the committee in accordance with the Federal Advisory Committee Act (FACA, 5 U.S.C. app. I); and section 7(b) of the Occupational Safety and Health Act (OSH Act; 29 U.S.C. 656 (b)) to mediate issues associated with the development of a Notice of Proposed Rulemaking (NPRM) on MDA.

This notice also solicited participants for the mediation process. As a result of the request for participants, three unions, the United Auto Workers (UAW), the United Steelworkers of America (USWA) and the Oil, Chemical, and Atomic Workers (OCAW) offered names of potential representatives for the Committee. OSHA selected representatives from the UAW and Steelworkers to participate in these mediation activities. The International Association of Machinists and Aerospace Workers (IAM) submitted a request for representation on the

Committee and a representative from this group was appointed. Later, as a result of scheduling conflicts, the UAW representative resigned and was replaced by a labor representative from the United Brotherhood of Carpenters and Joiners of America.

In addition to the unions that nominated participants, three trade associations representing employer groups also expressed an interest in participating in this rulemaking effort: the National Electrical Manufacturers Association (NEMA), the Suppliers of Advanced Composite Materials Association (SACMA) and the Chemical Manufacturers Association (CMA). Representatives from these groups reflect employer interest in primary and secondary manufacturing and, to some extent, downstream use of MDA in the construction industry. The other recommendations for representation came from the Department of Energy, Brookhaven National Laboratory, Sandia National Laboratories, the National Institute for Occupational Safety and Health (NIOSH), EPA, and the Occupational Safety and Health Administration for the State of California. A list of the candidates selected, the date of the first meeting, and the agenda for the first meeting were published in the Federal Register on July 3, 1986 (51 FR 24452).

OSHA also clearly denoted, in the October 22nd notice, the relevance which the Mediated Rulemaking efforts would have in the development of its proposed rule for occupational exposure to MDA:

While the Committee's work product will likely serve as the basis for a proposed rule, it will not negate the need for adherence to traditional rulemaking procedures. This negotiated rulemaking procedure is supplemental to the normal section 8(b) rulemaking procedures specified in the OSH Act and is intended to aid OSHA in developing a proposed standard for occupational exposure to MDA (at 42790).

Furthermore, OSHA's participation in these mediated rulemaking endeavors was clearly delineated and was, in fact, to be substantial. OSHA would be an active participant in these efforts. An OSHA representative provided draft regulatory text and the necessary expertise in standard drafting which the Committee needed.

To the extent that OSHA could not accept the Committee's recommendations as its notice of proposed rulemaking, OSHA agreed to publish its rationale for such non-acceptance. OSHA, for the most part, based its NPRM on the Committee's recommendations.

In addition, OSHA's approach entailed the Agency setting forth the issues on which the Committee must come to consensus. OSHA had the knowledge and experience needed to develop complex health standards. Furthermore, OSHA is cognizant of its own legal requirements and limitations. Thus, OSHA provided the Committee with the issues to be resolved, the record evidence accumulated to date, and the suggested draft regulatory language. The Committee used the record evidence and draft language provided by OSHA, along with information supplied by some of its members and, of course, the personal expertise of its members to achieve its consensus recommendations. The recommendations developed by the Committee reflect the consensus reached regarding the risk associated with occupational exposure to MDA, the PELs and standard provisions necessary to reduce this risk, and the technological and economic feasibility of implementing these standards. The Committee's products were comprehensive regulations with accompanying rationales.

The Committee also agreed that unanimous agreement on all the issues was not necessary for consensus to be reached. This is different than typical negotiations in which all the issues must be resolved in order to culminate successfully.

OSHA also required that the Committee be established in accordance with, and that it follow the requirements established by, the Federal Advisory Committee Act. The Mediated Rulemaking Committee was set up in the fashion that OSHA previously had established Advisory Committees under section 7(b) of the OSH Act. Thus, all the Committee's meetings, unlike typical labor/management negotiations, were open to the public and a record was kept and made available to the public.

Further, representation of the interests involved was mandatory; not representation of all the parties, but of all the interests. The recommendations proposed by this consensus building group were developed by representatives from labor, management, and state and federal interests.

The Committee met formally on seven occasions. The first meeting consisted of organizational activities (defining consensus, establishing agendas and topics for discussions). The subsequent meetings were used to develop consensus recommendations. The last meeting ended on May 21, 1987. In this meeting the Committee made and rendered its final recommendations on

the proposed standards regulating occupational exposure to MDA in both general industry and the construction industry to the Assistant Secretary. These recommendations were published on July 16, 1987 (50 FR 26776).

OSHA based its NPRM primarily upon the recommendations made by the Committee. Furthermore, in the infrequent situations where the Committee's recommendations could not be used by OSHA in its NPRM, OSHA, as agreed, provided its rationale for this non-acceptance.

OSHA also consulted, as required by section 107(e) of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333(e)) and 29 CFR 1912.3, with the Construction Advisory Committee concerning this proposed rule for Construction. This meeting took place on November 3, 1987. This Committee advised that OSHA adopt the recommendations made by the MDA Mediated Rulemaking Advisory Committee for the construction industry and use such as the basis for its NPRM for construction.

On May 12, 1989, OSHA published a Notice of Proposed Rulemaking (NPRM) which proposed new standards regulating occupational exposure to MDA (54 FR 20672). The comment period and the time for requesting a hearing was extended to July 11, 1989. OSHA received twenty-six comments including two hearing requests; one from the A.O. Smith Co. and the other from United Technologies. Accordingly, pursuant to section 6(b)(3) of the OSH Act, OSHA held hearings on the proposal on March 20 and 21, 1990. In response to the Notice of Hearing published on January 22, 1990 (55 FR 2101), OSHA received eleven comments and twelve Notices of Intention to Appear (NOIA) indicating the participants at the hearing. Interestingly, neither party who had requested the hearing filed a NOIA or participated at the hearing in any way. During the two day hearing, the Administrative Law Judge admitted twelve exhibits and established post-hearing comment periods that ran until May 23, 1990. OSHA has received eight timely post-hearing comments. The hearing record was certified by the Administrative Law Judge on October 10, 1990.

The final standard, like the proposed rule, is based primarily on the recommendations made by the MDA Mediated Rulemaking Committee. In those few instances where OSHA has amended the proposal and established different requirements in the final standard, these changes have been noted.

IV. Physical Properties, Manufacture, and Uses of MDA

Methylenedianiline (CAS 101-77-0) (MDA) is a light brown, or tan, crystalline solid with a faint amino-like odor. MDA is slightly soluble in water and very soluble in alcohol and benzene. MDA is produced commercially by the condensation of aniline and formaldehyde. Crude MDA (40-60% MDA) is a liquid or a hard wax-like substance. Purified (99%) MDA is in the form of either light yellow crystalline flakes or white granules.

Ninety-eight percent of the MDA produced is used directly in the manufacture of methylenediphenyl diisocyanate (MDI). The remaining two percent is used as a precursor for the manufacture of plastic fibers, antioxidants, dyestuff intermediates, corrosion preventatives, and special polymers.

The MDI is produced in two grades, monomeric (pure) and polymeric. Ninety percent of the crude MDA is used to produce polymeric MDI, and another 8% of the crude MDA is converted to monomeric MDI. MDI is used to produce flexible and rigid polyurethane foams, elastomers, coatings, thermoplastic resins, foundry core binders, adhesives, sealants, and spandex fibers.

The remaining MDA is produced in the pure form for other uses: epoxy resin curing agents, wire coating applications, polyurethane co-reactants, in pigments and dyes, and defense applications.

There are eleven principal industry sectors where workers are potentially exposed to MDA. These sectors are: (1) MDA Production for MDI Synthesis/MDA Sale and Import; (2) Reprocessing; (3) Filament Winding; (4) Potting and Encapsulation; (5) Molding/Bonding of Tools and Specialty Small Parts; (6) Wire Coating; (7) Application of Coatings; (8) Intermediate for TGMMA and PACM-20 Production; (9) Polyurethane Curing; (10) Advanced Composite Materials Production; and (11) Use of PMR-15 Pre-preg Materials. There are also seven other industrial sectors where MDA was once used and may still be used on a limited basis. These minor sectors are: (1) Coatings (Polybismalimides) of Printed Circuit Boards and Fabrication of Airplane Parts; (2) Dyes and Pigments; (3) Quiana Yarn; (4) Intermediate for Pharmaceuticals, Herbicides, etc.; (5) Rubber Processing; (6) Anti-Oxidants; and (7) Ketamine Production. Maintenance workers have been separately identified from each of these sectors for purposes of analysis. Occupational exposure to MDA also

occurs in the Construction and Maritime industries.

There are six firms which produce MDA for MDI production, MDA for sale, or which import MDA. MDA is manufactured by 6 companies at 7 locations in four states: Dow Chemical Co. (LaPorte, Texas); BASF (Geismar, LA); E.I. DuPont (Belle, WV); Mobay Chemical (New Martinsville, WV and Baytown, TX); Rubicon Chemical (Geismar, LA); and Unroyal Chemicals division of Avery (Naugatuck, CT). Three of these companies, Mobay, Rubicon, and Dow account for over 90% of the MDA production. It is estimated that approximately 600 million pounds of MDA are produced for MDI conversion, 4,474,000 pounds are produced domestically for sale, and an additional 1.8 million pounds are imported. In addition, it is estimated that the percentage of MDA in the product made domestically ranges from 40-70% while the percentage in the imported product is approximately 98%.

V. Health Effects of Exposure to MDA

A. Summary of the Committee's Recommendations

1. Introduction

The Committee reviewed the record evidence concerning the acute and chronic effects of exposure to MDA in both animals and humans and concluded that MDA should be treated as a hepatotoxic agent and as a suspect human carcinogen. The Committee also concluded that an occupational standard regulating worker exposure to MDA should be developed. The following discussion provides the Committee's findings with respect to the hepatotoxic and carcinogenic hazards posed by occupational exposure to MDA.

2. Acute Effects of Exposure to MDA

A. Hepatotoxicity. The record evidence on the acute effects of occupational exposure to MDA indicates that occupational exposure to MDA may result in hepatotoxicity (poisoning of the liver). The Committee relied on an abundance of human and animal data to support this finding. (See Hepatotoxicity Section of the Committee's Document, ex. 9).

The Committee found that one or a few exposures to high doses of MDA may result in toxic hepatitis. However, in all cases the clinical signs and symptoms of hepatitis produced by this exposure were reversible. The Committee's discussion concerning the acute effects resulting from acute exposures can be found at 52 FR 26779 and 26780. In summary the Committee

stated clearly that "The predominance of data reflect the induction of disease as a result of dermal absorption of MDA" and further provides a data analysis from Kopelman, McGill and Motto, and Brooks et al. An analysis of the data did not rule out the possibility that liver toxicity might result from low doses. Furthermore, the analysis did not determine the effects long term low doses might have on liver function. However, the Committee tentatively did conclude that at the present occupational levels the clinically observed non-neoplastic effects of exposure to MDA appear to be totally reversible. This conclusion was based solely on review of the data found in the acute human studies (human chronic exposure studies are not available). Animal data however, did indicate that long term MDA dosing at low levels produced various levels of liver damage. Thus while making a finding that occupational exposure to MDA may result in liver toxicity, the Committee was unable to develop dose-response data which could predict with some certainty the exposure necessary to produce liver toxicity. More precisely, the Committee was unable to conclude that at 5 ppb, liver toxicity would not occur.

In an effort to make these findings, the Committee extensively reviewed the record evidence to determine the levels of exposure at which a No Observed Effect Level (NOEL) for the clinical observation of hepatitis could be expected to occur in a worker population. The available literature on workers occupationally exposed to MDA provided limited data on the occupational doses to which the workers were exposed. This is due in part to a lack of ambient sampling data but more often because the primary mode of exposure was through the skin and not through inhalation. The Committee further acknowledged that in the case of MDA, unlike many acutely toxic chemicals which are associated with acute inhalation effects such as irritation and pulmonary edema, the primary effect has been liver damage following ingestion or skin absorption. The only available data the Committee could use to estimate a NOEL for liver toxicity due to occupational exposure to MDA are the data reported by Kopelman et al. from the Epping Jaundice incident. This data suggested that levels in excess of 100 ppb would be necessary to produce acute hepatitis in worker populations. The Committee relied on these findings in making its recommendations for the TWA and the STEL.

B. Dermal Irritation. The Committee believed that the ability of MDA to induce contact sensitization has not been studied sufficiently to conclude that MDA causes sensitization.

C. Retinal Effects. The Committee reviewed the record evidence concerning the effects which might result from eye contact with MDA. The Committee concluded that direct contact between MDA and the eye should be avoided. In addition, the Committee noted that ingestion of MDA might also result in damage to the eye and as such should also be avoided.

3. Chronic Effects of Exposure to MDA

A. Hepatotoxicity. The Committee found that at the present occupational levels, the observed or clinical non-neoplastic effects resulting from exposure appear to be totally reversible (ex. 9). This conclusion is based on review of the data found in the acute human studies. Animal data indicate that long term MDA dosing at low levels produces various levels of liver damage, but since most of the studies have involved the dosing of the animals until sacrifice, it is difficult to determine if the observed effects would or could have been reversed if sufficient time had been allotted for healing.

B. Carcinogenicity. The Committee concluded that MDA is a carcinogen in F344/N rats and B6C3F1 mice of each sex. Furthermore, it appears that carcinogenicity is induced either through ingestion, inhalation, or dermal absorption of the substance.

The Committee considered extensively the type of data needed to determine carcinogenicity in animals and to relate the observed effects in animals with that expected in humans. The Committee generally accepted the policy set forth by public health agencies, that test results in mammalian species (including the mouse), are acceptable data for predicting potential hazards to exposed humans.

The Committee also recognized that confounding factors associated with long term bioassays could cause carcinogenicity findings to be questioned. First, the Committee recognized the need to use control groups, as was done in the NTP and ORNL bioassays, and to validate the carcinogenic findings in rodent species that normally exhibit a high spontaneous incidence of tumors.

Second the Committee also discussed the effect that high dosing and subsequent acute toxicity may have on the production of liver and thyroid tumors found in the female mice of the NTP study. The Committee determined

that the observed incidence of tumors found in the female mice of the NTP study did not occur as a result of high dosing but occurred from exposure to MDA.

Third the Committee noted that the presence of tumor viruses in mice does not necessarily invalidate the identification of MDA as a carcinogen. In making this determination, the Committee made use of the policies advocated by numerous health agencies, including OSHA, which requires that, to make a viral etiology finding, the virus must be established to be the sole direct mechanism producing the carcinogenic effect. Not finding this necessary evidence, the Committee agreed that the carcinogenic response was not the result of viral etiology.

The Committee found that the NTP study was conducted properly, and therefore used this study as the principal basis for its carcinogenicity findings.

In addition, a majority of the Committee members concluded that MDA induces cancer by a genotoxic rather than a non-genotoxic mechanism and, as such, a threshold level for the carcinogenic response did not exist. The Committee concluded that the evidence offered for the existence of thresholds for this carcinogen was insufficient to overcome the extant evidence for a genotoxic mechanism. The Committee relied on two basic concepts to make this decision. First, the members required that if a threshold was to be considered, data indicating at what level a threshold would occur must be provided. Secondly, once a threshold is established in experimental animals, the threshold must be shown to be applicable to any exposed group of workers. No evidence was offered which meets these minimum criteria and thus the Committee made a recommendation that a no-threshold-effect be used to predict the risk associated with occupational exposure to MDA. In addition, the Committee believed that, even if a threshold for specific carcinogens could be demonstrated in experimental test animals or even in a specific human population, it might not be applicable to any given human population at risk. No data were furnished which equated a threshold observed in animals with that expected in humans.

Other concerns raised by some of the Committee members involve the use of MDA dihydrochloride rather than MDA itself as the administered dose in the NTP bioassays. The Committee noted that test animals in the Oak Ridge National Laboratories study were exposed dermally to MDA and not the hydrochloride as in the NTP study.

Furthermore, the Committee noted that in the Oak Ridge test animals the carcinogenic response seen in the female mouse livers was approximately double that noted in the NTP study. Thus, the Committee concluded that exposure to MDA produced the carcinogenic effect, and not exposure to the salt.

The Committee also examined supportive evidence of carcinogenicity derived from short term mutagenicity tests. The Committee recognized that the various short-term tests do not measure the same mutagenic endpoint; thus positive and negative findings are not uncommon, since no single short-term test can measure all the events which might lead to mutagenesis. The Committee agreed that there is a wide variety of opinions on the reliability of using short-term studies as indicators of potential carcinogenicity. Many of the Committee members believed, however, that such tests provide meaningful indicative results and that substances which give positive results in well validated systems are likely to be carcinogenic. Further, it appears that the probability of a false-positive result for a chemical which is positive in one well conducted bioassay and one well validated short term-test is extremely small. Thus, based on record evidence consisting of both bioassays and short-term tests the Committee concluded that MDA causes cancer in experimental animals.

The Committee also analyzed the data to relate the findings of "pooled tumors" incidence in mice to some common site in man. The Committee acknowledged that scientific investigations have shown that target sites for the carcinogenic action of a substance in humans are not necessarily the same as those found in animal experiments. There were basically three pieces of suggestive evidence examined by the Committee to link the carcinogenic response in animals to the expected response in humans (bladder cancer):

- (1) The NIOSH-Vertol Health Hazard Evaluation (HHE) study (Ex. 1-255);
- (2) The presence of bladder transitional cell papillomas in three MDA treated rats in the NTP-Bioassay (Ex. 1-36); and
- (3) Some structure-activity links with the proven human and animal bladder carcinogen, benzidine, and the dog bladder carcinogen, methylenebis-(2-chloroaniline) (MBOCA).

The only available human data implicating MDA as a human carcinogen were from the HHE. The Committee reviewed these data thoroughly before concluding that the data were

insufficient to positively identify MDA as a human bladder carcinogen or to use the data contained in this report to establish permissible exposure limits. However, the Committee did not exclude the fact that the report did develop a hypothesis regarding MDA exposure and bladder cancer which warrants further investigation using the more rigorous epidemiologic methods.

The Committee also found that the development of bladder transitional cell papillomas in the female rats in the NTP bioassays to be significant. These relatively rare tumors were benign although progression to malignancy in this class of tumors may occur. Furthermore, the Committee recognized that the appearance of transitional cell papillomas in MDA treated rats was unique and demonstrated the chemical specificity of the results observed.

The Committee analyzed the structure activity relationships between MDA and several other substances identified by EPA as structural analogs. A majority of the Committee members maintained that there are significant structural differences between benzidine and MDA and that a strong analogy does not exist. The Committee generally believed, however, that while the structural analogy data are not conclusive, nonetheless these data should be relied upon to suggest that MDA may cause bladder cancer in humans. Although the Committee could not positively link occupational exposure to MDA with bladder cancer in workers, the Committee recommended stringent standard provisions to protect workers against the carcinogenic potential posed by MDA regardless of the target site.

4. Reproductive Effects

The majority of the Committee members concluded that, while the data suggest that there may be hormonal changes at relatively high doses, the occupational significance of these changes could not be assessed.

5. Teratogenic Effects

The Committee has reviewed the data on the teratogenic effects of exposure to MDA and could not relate the significance of these observed effects in animals with those anticipated in the occupational setting.

6. Absorption, Distribution, and Deposition

The majority of the Committee members agreed that where sufficient data exist which are MDA specific (e.g., dermal absorption data), these data should be used to determine the biological activity of the chemical.

However, the Committee found that data obtained through the El-Hawari study (ex. 1-251) were not sufficient to make determinations concerning the gastrointestinal and respiratory absorption of MDA. The Committee anticipated that future research on the gastrointestinal and respiratory absorption of MDA will also substantiate the findings made from the structural analogue comparisons and demonstrate that these assumptions are also conservative.

The Committee agreed that a 100% absorption through the gastrointestinal tract of the mouse be used in generating the risk assessment model rather than 50% absorption proposed by EPA. The Committee realizes that this is a conservative approach because it assumes that the observed effect is a result of absorption of the entire dose administered and not a result of the absorption of a lesser portion of the administered dose. This assumption has the effect of reducing the expected risks predictable from occupational exposure to MDA by 50%.

The Committee agreed, however, with EPA's assumption that absorption through lung tissue is roughly equivalent to gastro-intestinal absorption (50%), especially if MDA is in the vapor phase or has a particle size of less than 2 microns.

The Committee also concluded that MDA is actually dermally absorbed at approximately 2% per hour and not 1% as previously assumed (ex. 1-251). Therefore, an absorption rate of 2% can also be applied to MDA exposure which occurs through dermal deposition and absorption.

The Committee also stressed the significance which the hazard of dermal exposure posed. Data from the Oak Ridge National Laboratory study (ex. 8) heightened the Committee's concern over these hazards. The Committee concluded that when a chemical is ingested, it is transported through the hepatocellular detoxification system and is not generally diluted as a result of passing through the general circulatory system. In the case of chemicals applied to the skin, however, a significant dilution takes place as a result of the absorbed chemical passing through the general circulatory system before passing through the hepatocellular detoxification system. Compared with the findings of the NTP study in which animals were exposed through ingestion, the Oak Ridge data reported almost a two-fold increase in the liver tumor incidence observed in the female test animals dermally exposed to MDA. These findings are additional evidence

that occupational dermal exposure to MDA should be prevented.

In addition, the Committee was concerned with the findings of El-Harawi (ex. 1-251) indicating that once deposited on the skin, MDA cannot be completely removed by cleansing. The data suggest that the use of solvents to remove MDA from the skin actually increases the absorption of MDA. It also appears that soap and water provide the best medium for removing the substance from the skin, but only remove approximately 60% of the material deposited on the skin. These findings support the provisions of the final standard which require the use of personal protective clothing and equipment to prevent MDA exposure and medical surveillance to assure that the integrity of the protective equipment and clothing is being maintained.

B. OSHA's Findings

The following discussion of the health effects associated with occupational exposure to MDA is merely a summary account of the extensive analysis and findings made by [the Committee and] OSHA. Complete discussions of the health effects conclusions reached by the Committee [and accepted by OSHA] are found at 52 FR 26779 *et seq.* (July 16, 1987) [and 54 FR 20677 *et seq.* (May 12, 1989), respectively]. All of these health effects findings were essentially unchallenged by commenters and parties at the hearing.

The record evidence on the acute effects of occupational exposure to MDA indicates that exposure may result in hepatotoxicity (poisoning of the liver). These findings are based on an abundance of human and animal data. (52 FR 26779).

Evidence also indicates that direct contact between MDA and the eye as well as ingestion might result in damage to the retina of the eye. (52 FR 26780).

OSHA also finds that at the present occupational levels, the observed non-neoplastic effects on the liver resulting from exposure appear to be reversible (ex. 9). This conclusion is based on review of the data found in studies of acute liver disease in humans.

OSHA concludes that MDA is a carcinogen based on studies of F344/N rats and B6C3F1 mice of each sex. Furthermore, it appears that carcinogenicity is induced either through ingestion, inhalation, or dermal absorption of the substance. There were basically three pieces of evidence examined by OSHA which related the carcinogenic response of MDA in animals to the expected response in humans (bladder cancer):

(1) The NIOSH-Vertol Health Hazard Evaluation (HHE) study which demonstrated a significantly elevated PCMR for bladder cancer among workers exposed to MDA (ex. 1-255);

(2) The presence of bladder transitional cell papillomas in three MDA treated rats in the NTP-Bioassay (ex. 1-36); and

(3) Some structure-activity links with benzidine, a proven human and animal bladder carcinogen, and with methylenebis-(2-chloroaniline) (MBOCA) a substance known to cause bladder cancer in the dog and suspected of causing bladder cancer in humans (52 FR 26787).

Although the evidence was not conclusive in demonstrating a causal link between occupational exposure to MDA and bladder cancer, OSHA nonetheless developed standard provisions to protect workers against the carcinogenic potential posed by MDA regardless of the target site.

OSHA also finds that, while the data suggest that there may be hormonal changes at relatively high doses, the occupational significance of these changes cannot be assessed. (52 FR 26783).

Furthermore, OSHA has reviewed the data on the teratogenic effects of exposure to MDA and cannot relate the significance of these observed effects in animals with those anticipated in the occupational setting. (52 FR 26784).

OSHA has also determined that the available data on the ability of MDA to induce contact sensitization has not been studied sufficiently to conclude that MDA causes sensitization. (52 FR 26786).

In reviewing the record evidence concerning the acute and chronic effects of exposure to MDA in both animals and humans, OSHA concludes that MDA must be regulated as both a hepatotoxic agent and a human carcinogen. OSHA tentatively made these findings in its NPRM and the Agency's conclusions remain unchanged. In fact, there was no evidence submitted in response to the NPRM which would cause OSHA to amend its earlier conclusions that MDA should be treated as a hepatotoxic agent and a suspect human carcinogen.

VI. Risk Assessment

OSHA's approach to risk assessment is guided by Supreme Court interpretations of the OSH Act, namely decisions involving benzene (*Industrial Union Department, AFL-CIO v. American Petroleum Institute*, 448 U.S. 607 (1980)); and cotton dust (*American Textile Manufacturers Institute v. Donovan*, 452 U.S. 490 (1981)). The Court

has ruled that OSHA may not promulgate a standard unless it has determined, based on substantial evidence in the record considered as a whole, that there is a significant risk of health impairment at existing permissible exposure levels and that issuance of a new standard is necessary to achieve a significant reduction in that risk. Although in the cotton dust case the Court rejected the use of cost-benefit analysis in setting OSHA standards, it reaffirmed its earlier holding in the benzene case that a risk assessment relating to worker health is not only appropriate, but is, in fact, required in order to identify a significant worker health risk and to determine whether a proposed standard will achieve a reduction in that risk. Although the Court did not require OSHA to perform a quantitative risk assessment in every case, the Court implied, and OSHA as a policy matter agrees, that such assessments should be put in quantitative terms to the extent possible (48 FR 17292).

Several approaches can be used to estimate cancer risk from exposure to toxic agents. A standard approach uses mathematical models to describe the relationship between dose (such as airborne concentration) and response (e.g., cancer). Generally, curves are fit to the data points observed at different exposure levels and these curves are used to predict the risk that would occur at exposure levels which were not observed. The shape of these curves is varied, ranging from linear extrapolations from the observed points through the origin (zero exposure and zero risk) to curves which may deviate far from linearity at the very highest and very lowest doses. The use of a particular model or curve can be justified in part by a statistical measure of "fit" to available data points, that is, a statistical test which measures how closely a predicted dose-response curve is to the actual observed data.

In all cases it is assumed that the mathematical curves are reflective of biological processes that control the biological fate and action of the toxic compound. To date, many of these factors have not been quantitatively linked to the mathematical models. Biological factors which may play important roles in the risk assessment are: (1) Dose of the material at the sensitive tissue; (2) the sensitive tissue(s) itself; (3) the nature of the response(s); (4) rates and sites of biotransformation; (5) toxicity of metabolites; (6) chronicity of the compound (cumulative nature of the material or its actions); (7)

pharmacokinetic distribution of the material (especially effects of dose on the distribution); (8) the effect of biological variables such as age, sex, species and strain of test animal; and (9) the manner and method of dosing the test animals (48 FR 45969).

It is clear that all of these factors cannot be easily incorporated into a single mathematical model. Therefore, careful selection of the data and general assumptions necessary for evaluation in the model is important to the risk assessment in order to make use of as much information as possible.

In doing its risk assessment for MDA, OSHA has considered various assumptions that it believes to be the most reasonable. The risk estimates are found in Table 1 below (table 1, ex. 1-247). Some of the underlying assumptions used in predicting these risks are: (1) 100% GI absorption; (2) two 4-hour work shifts; (3) 2% dermal absorption rate; (4) body weight scaling factor; and (5) upper body absorption as set forth in table 1. A body weight scaling factor is a quantitative adjustment of the dose used in the NTP study to account for the differences in weight between humans and rodents.

Using these estimates of risk, approximately 6 to 30 per 1000 workers may be at risk of developing cancer when exposed at worst case existing conditions to MDA over a working lifetime (table 1, scenario 1). OSHA also notes that these estimates of risk are not based on the application of a scaling factor based upon surface area. When this surface area scaling factor is applied, the estimates of risk significantly increase to ten times the risk levels shown in table 1. OSHA did not adopt this scaling factor because there was no evidence that this was a more appropriate approach to use than the traditional body weight conversions used by OSHA.

In addition, OSHA notes that in making the estimates of risk, OSHA has gone beyond the traditional regulatory methodology and added to this assessment the estimates of risk which can be expected from dermal deposition. OSHA recognizes that substantial exposure may occur through deposition and subsequent absorption of MDA on the upper body, neck, etc., and has considered these confounding factors in assessing risk (in certain situations approximately 95% of exposure results from dermal absorption).

While OSHA was able to make estimates of risk which might result from dermal exposure, OSHA was unable to establish allowable dermal exposure limits. There are a number of reasons

why this is impractical, among which are the difficulty of quantifying dermal exposures, the inability to select a reliable biological indicator, and finally the difficulty in correlating the amount absorbed with a precise adverse health effect. OSHA has not quantified risks resulting from dermal exposure in other toxic substance standards. In order, to adequately regulate dermal exposure to MDA, OSHA requires adherence to permissible exposure limits (which reduces surface contamination by MDA thereby reducing the opportunity for skin contact and reduces potential for re-entrainment into the air) and the use of personal protective clothing and equipment and the other standard provisions, all of which aid in preventing dermal exposure.

No evidence was provided subsequent to the issuance of the NPRM which would cause OSHA to change any of the findings herein stated.

VII. Significance of Risk

OSHA previously made a preliminary finding of significant risk resulting from occupational exposure to MDA in responding to EPA's referral (51 FR 6748), and in the proposed rule at 54 FR 20682. In making this determination, OSHA was guided by a number of factors that are consistent with recent court interpretations of the OSH Act and rationale, and policy formulation regarding significance of risk. As prescribed by section 6(b)(5) of the OSH Act, the Agency examined the body of "best available evidence" on the toxic effects of MDA to determine the nature and extent of possible health consequences resulting from workplace exposure. The quantitative risk assessment found in Table 1 was used with other relevant information by OSHA to determine whether establishing a permissible exposure limit and other standard provisions would substantially reduce the risk.

For guidance in determining whether regulatory activity would substantially reduce the risk, OSHA followed general guidance given to the Agency by the Court for arriving at findings of the significance of an occupational health risk. The Court stated as follows:

It is the Agency's responsibility to determine in the first instance what it considers to be a "significant" risk. Some risks are plainly acceptable and others are plainly unacceptable. If, for example, the odds are one in a billion that a person will die from cancer by taking a drink of chlorinated water, the risk clearly could not be considered significant. On the other hand, if the odds are one in a thousand that regular inhalation of gasoline vapors that are 2% benzene will be fatal, a reasonable person

might well consider the risk significant and take appropriate steps to decrease or eliminate it (*IUD v. API*, 448 U.S. at 655).

Although the Court's example is based on a quantitative expression of the risk, the Court indicated that the significant risk determination required of OSHA is not "a mathematical straitjacket," and that "OSHA is not required to support the finding that a significant risk exists with anything approaching scientific certainty." The Court ruled that:

... a reviewing court [is] to give OSHA some leeway where its findings must be made on the frontiers of scientific knowledge [and] ... the Agency is free to use conservative assumptions in interpreting the data with respect to carcinogens, risking error on the side of overprotection rather than underprotection (448 U.S. at 655, 656).

OSHA largely bases its findings that a particular level of risk is "significant" on policy considerations (*IUD v. API*, 448 U.S. 655, 656, n. 62). As part of the significant risk determination, OSHA examined a number of factors consistent

with its policy (see Arsenic, 48 FR 1864, January 14, 1983; Ethylene Oxide, 48 FR 17284, April 21, 1983; Asbestos, 51 FR 22611, June 20, 1986); and Formaldehyde, 52 FR 46167, December 4, 1987. These include the type of risk presented, the quality of the underlying data, the reasonableness of the risk assessments, and the statistical significance of risk. Table 1 was adopted by the Committee from the OSHA MDA risk assessment found in the Docket at exhibit 1-247.

TABLE 1.—ESTIMATED CANCER RISKS FOR WORKER EXPOSURE TO MDA

Case	Airborne level mg/m ³ (ppb)	Dermal deposition ug/cm ² /hr	Inhalational exposure kg/day	Dermal exposure kg/day	Total exposure kg/ day	Cancer risk MLE (U95CL) excess	Comments
I(a)	0.57(70)	9.0 (palms) and 2.5 (upper body)	0.021	0.0749	0.096	6(7)/1000	Worst existing case for manufacturing.
(b)	0.38 (47)	250 (palms) 27 (upper body)	0.014	0.4186	0.43	3(3)/100	Worst existing case for processing.
II(a)	0.00	4.2 (palms)	0.00	0.0041	0.0041	3(3)/10,000	Hypothetical case to show palm exposure.
(b)	0.00	2.1 (palms)	0.00	0.0021	0.0021	1(2)/10,000	Hypothetical case to show palm exposure.
III(a)	0.01(1)	0.03 (upper body)	0.00036	0.00087	0.0012	8(9)/100,000	Regulatory alternative considered.
(b)	0.001(12)	0.003 (upper body)	0.000036	0.000087	0.00012	17(9)/M	Regulatory alternative considered.
(c)	0.0001(0.12)	0.0003 (upper body)	0.0000036	0.0000087	0.000012	7(9)/10M	Regulatory alternative considered.
(d)	0.16 (20)	0.6 (upper body)	0.0072	0.0175	0.025	2(2)/1000	Regulatory alternative considered.
(e)	0.1 (10)	0.3 (upper body)	0.0036	0.00875	0.012	8(9)/10,000	Regulatory alternative adopted.

: M designates 1,000,000.

OSHA reviewed the toxicological and epidemiological literature and the record evidence on MDA described in the Health Effects section. The record, as summarized herein, shows that MDA exposure is associated with a number of adverse health effects. The NTP study indicates that MDA is carcinogenic in both rats and mice (ex. 1-36). The study appears to have been conducted in accordance with good laboratory practices and is adequate for use as the basis for quantitative risk assessment. The Oak Ridge National Laboratories data also support the findings that MDA is a carcinogen in test animals (52 FR 26782). The ability of MDA to induce tumors in animals, evidence that MDA induces cancer in humans, and data indicating that MDA interacts with genetic material lead to the conclusion that this chemical is an animal carcinogen and is probably carcinogenic to humans.

In animals, MDA has also been associated with genotoxicity, retinopathy, allergic dermatitis, and hepatotoxicity. In addition, human studies strongly indicate that MDA causes a characteristic acute toxic hepatitis.

The quantitative risk assessment, which is used to estimate risk in humans is based on animal studies by NTP. This correlation is achieved by reliance upon generally accepted health policies, which indicate that carcinogenicity demonstrated by a chemical in mammalian species is sufficient to conclude that carcinogenicity is possible to humans. The fit of the experimental cancer data to the model used in making the extrapolations is good and the risk assumptions are reasonable. Therefore, the resulting assessment appears appropriate.

Currently, there is no OSHA standard regulating occupational exposure to MDA. The estimates of occupational risk resulting from inhalation and dermal contact with MDA were made from data (approximately 1983) collected by NIOSH, EPA, and CMA which indicate that current ambient exposures are in the range of 50 to 70 ppb (scenarios I(a) and I(b) of table I). The estimates of lifetime risk resulting from these ambient exposures together with dermal deposition were approximately 6-30 per 1000. OSHA concludes that the exposure data and the data used to make risk predictions are appropriate and finds that occupational exposure to MDA constitutes a significant risk of harm to workers. These findings are consistent with OSHA determinations from other rulemakings such as: Ethylene Oxide

(April 21, 1983; 48 FR 17284, 17295); Benzene (September 11, 1987; 52 FR 34460, 34497); and Formaldehyde (December 4, 1987; 52 FR 46168, 46223). Those estimates per 1000 employees for a working life-time exposure were 63-109 excess cancer deaths from ethylene oxide; 95 excess leukemia deaths from benzene; and 4-18 excess cancer deaths from formaldehyde, based on the PEL's which applied prior to the completion of new lower standards.

In evaluating significant risk a framework is provided by an examination of occupational risk rates and legislative intent. For example, in the high risk occupations of fire fighting and mining and quarrying the average risk of death from an occupational injury or an acute occupationally related illness from a lifetime of employment (45 years) is 27.45 and 20.16 per 1,000 employees respectively. Typical lifetime occupational risks of death in occupations of moderate risk are 2.7 per 1,000 for all manufacturing and 1.62 per 1,000 for all service employment. Typical lifetime occupational risks of death in occupations of relatively low risk are 0.48 per 1,000 in electric equipment and 0.07 per 1,000 in retail clothing. These rates are derived from 1979 and 1980 Bureau of Labor Statistics data from employers with 11 or more employees adjusted to 45 years of employment for 46 weeks per year.

In light of the above, OSHA concludes that the estimates of risk associated with occupational exposure to MDA (6 to 30 per 1000) fit well within the range of other risks which OSHA has previously concluded are significant. These estimates are higher than risks of fatality in occupations of average risk, and are substantially higher than the examples presented by the Supreme Court (*IUD v. API, Id.*).

OSHA finds that the implementation of the final standards will substantially reduce the risks associated with occupational exposure to MDA. OSHA estimates that the risks associated with the PEL of 10 ppb in conjunction with other provisions of the standard will be reduced to less than 0.8 excess cancer deaths per 1000 workers exposed over a working life-time (See table 1, scenario III(e)). This represents an 87 to 98 percent reduction in risk. OSHA considers such a reduction to be substantial. Although OSHA is not able to quantify the reduction in the incidence of other diseases that would occur with the implementation of the standard, OSHA finds that these would also be reduced.

OSHA believes that the presence of the additional provisions in the MDA

standards act together to reduce the risks associated with occupational exposure to MDA. Provisions, such as annual training, medical surveillance, hazard communication, emergency plans, housekeeping, and exposure monitoring, work together in an inextricable manner to provide additional protection to workers both from cancer and from other toxic effects (52 FR 46234).

No evidence was provided as a result of the issuance of the NPRM which would cause OSHA to change any of the risk assessment analyses or conclusions. A more complete discussion of the significant risk of occupational exposure to MDA can be found in the NPRM (54 FR 20672, May 12, 1989) and the Committee's Recommendations (52 FR 26776, July 16, 1987).

VIII. Summary of the Regulatory Impact Analysis and Regulatory Flexibility Analysis

General Industry

OSHA examined the following three regulatory alternatives in the analysis: (1) a 20 ppb (0.160 mg/m³) PEL with a 10 ppb action level, (2) a 10 ppb (0.08 mg/m³) PEL with a 5 ppb action level, and (3) a 1 ppb (0.008 mg/m³) PEL with a 0.5 ppb action level. The technological feasibility of implementing a STEL was assumed to be feasible for any of the TWA/PEL alternatives examined, in that the same controls needed to reduce the TWA would also assure that the STEL is met. OSHA's findings are as follows:

- It is technologically feasible for industry to comply with a 10 ppb PEL by installing some readily available engineering controls and incorporating some new work practices. Although it may also be feasible for some industry sectors to achieve 1 ppb as an exposure level, that level is not feasible for major sectors of industry.

- Lowering the PEL from the present levels to 10 ppb, in conjunction with other provisions of the standard, would result in annualized compliance costs of approximately \$10 million and save an estimated 1.8 to 18 production workers lives per year of exposure. In addition, compliance with the new standard will cost an estimated \$0.7 million and save an estimated 0.5 maintenance workers' lives per year of exposure.

- The standard is economically feasible for the sectors studied and will not significantly affect either the competitive structure or the long-term profitability of these sectors.

- The standard is economically feasible and will not result in significant

or differential impacts on small business establishments covered under the scope of the standard.

• There are no nonregulatory alternatives that adequately protect most workers from the adverse health effects associated with MDA exposure. A summary of the benefits and costs estimated by the Committee for the recommended PEL of 10 ppb and two other alternative PELs (20 ppb and 1 ppb) is provided in exhibit 12, OSHA's PRIA.

a. Industry and Exposure Profiles

There are eleven principal industry sectors (maintenance workers for each sector have been separately identified for purposes of analysis) where workers are potentially exposed to MDA. These sectors are: (1) MDA Production for MDI Synthesis/MDA Sale and Import; (2) Reprocessing; (3) Filament Winding; (4) Potting and Encapsulation; (5) Molding/Bonding of Tools and Specialty Small Parts; (6) Wire Coating; (7) Coatings; (8) Intermediate for TGMDA and PACM-20 Production; (9) Polyurethane Curing; (10) Advanced Composite Materials Production; and (11) use of PMR-15 Pre-preg Materials. Further, there are also seven other industrial sectors where MDA was once used and may still be rarely found. These minor sectors are: (1) Coatings (Polybismalimides) of Printed Circuit Boards and Fabrication of Airplanes Parts; (2) Dyes and Pigments; (3) Quilana Yarn; (4) Intermediate for Pharmaceuticals, Herbicides, etc.; (5) Rubber Processing; (6) Anti-Oxidants; and (7) Ketamine Production.

OSHA also finds that MDA is made primarily to serve as an intermediate in the production of methylenediphenylisocyanate (MDI) and MDI is used in a wide variety of products. However, one to two percent of all MDA produced is sold for uses such as epoxy or polyurethane curing, or production of polyamides. In addition, some MDA is imported and used to produce a crude MDI known as PAPI or used for other non-MDI uses such as tetraglycidyl methylenedianiline (TDGMA) or PMR-15 manufacture. Occupational exposure to MDA occurs in the Construction and Maritime industries, as well.

OSHA also finds that there are six firms which produce MDA for MDI production, MDA for sale, or which import MDA. MDA is manufactured by six companies at seven locations in four states. Dow Chemical Co. (LaPorte, Texas); BASF (Geismar, LA); E.I. DuPont (Belle, WV); Mobay Chemical (New Martinsville, WV and Baytown, TX); Rubicon Chemical (Geismar, LA); and

Uniroyal Chemicals division of Avery (Naugatuck, CT). Three of these companies, Mobay, Rubicon, and Dow, account for over 90% of the MDA production. Further, OSHA estimates that approximately 600 million pounds of MDA are produced for MDI conversion, 4,474,000 are produced domestically for sale, and an additional 1.8 million pounds are imported. In addition, it is estimated that the percentage of MDA in the product made domestically ranges from 40-70%, while the percentage in the imported product is approximately 98%.

Uses of MDI are far reaching and include areas of construction, refrigeration, transportation, tank and pipe insulation, packaging, casting systems for solid products, and systems for microcellular products. Consumer products include polyurethane foams (rigid, and flexible), elastomers, coatings, thermoplastic resins, foundry core binders, adhesives and sealants, and spandex fibers. Thus, because MDA is the reactant chemical in the production of MDI, the significance of and the need for MDA depends upon the need to produce MDI. However, since there are so many products containing MDI and the extent of MDI use is increasing, it can be assumed that MDA use will also continue to increase. In addition, the non-MDI uses of MDA (2% of total MDA consumption) are also expected to increase as product demand in the areas of nuclear energy, weapons manufacture, and space exploration increases.

OSHA estimated that the number of exposed production workers is 3,836 in the eleven principal industry sectors and an additional 189 maintenance workers are also exposed in these sectors. The average weighted exposure levels ranged from 1 ppb in PMR-15 use to 19 ppb in Filament Winding. For maintenance workers the estimated average exposure level is 250 ppb. The average days of MDA exposure per year ranged from 47 for Advanced Composite Manufacture to 250 for Production and some of the other sectors.

b. Benefit Analysis

The major benefit of the standard would be a reduction in the occurrence of occupational illnesses. Some aspects of these benefits can be quantified, such as the reduced risk of cancer due to direct exposure to MDA. The number of cancer deaths that may be prevented because of the MDA regulation is based on the model for quantitative assessment of the risk of cancer deaths resulting from occupational exposure to MDA in conjunction with the estimates of the number of workers exposed to

MDA levels in various operations. The model and the exposure estimates are generally based on "realistic worst-case" assumptions; yet, in some respects, the use of the model also tends to underestimate the true benefits of the final regulation, because the only benefits quantified in the analysis are those resulting from a reduced incidence of cancer. They do not include an estimate of the reduction in the incidence of other adverse health effects potentially associated with MDA exposure such as liver disease or dermatitis. Because of data limitations, OSHA could not quantify these additional benefits. OSHA's benefit analysis reflects the estimated number of lives saved that will occur when the standards are implemented. OSHA used risk estimates to determine benefits. OSHA is cognizant of the fact that many regulatory agencies, such as EPA, recommend using the surface area scaling factor because application of this factor makes the correlation between dose in animal and dose in man more precise. The application of the surface area scaling factor increases the benefits by one order of magnitude.

OSHA estimates, using "realistic worst case" assumptions, that implementing a 10 ppb PEL and the associated duty provisions may result in 2.3 cancer deaths averted per year of exposure. In addition, if the surface area scaling factor is applied, OSHA estimates that 23 cancer deaths per year could be averted.

c. Technological Feasibility

OSHA has determined that the final standard is technologically feasible. The methods that can be used to reduce employee exposure to MDA include conventional technologies such as general and local exhaust ventilation, pneumatic feed systems, glove boxes, and work practices. Such technologies are commonly known and currently used in the affected industries. In addition, provisions of the standard that are not related to the PEL, such as medical surveillance and training, are judged to be feasible.

d. Costs of Compliance

OSHA made estimates of the compliance costs that would be incurred by employers in the eleven principal industry sectors which handle MDA and would be primarily affected by the standard. Because there are industry-specific differences in exposure characteristics and equipment usage, cost estimates for each sector were developed separately.

A baseline of current industry practice was identified for each sector. This baseline was derived from information on current production methods, exposure levels, and hazard control techniques. The costs of the controls which would be needed to achieve each successively lower PEL were then estimated based on the assumption that new controls could be added to those controls already in place.

It should be noted that the lower the target PELs, the higher the uncertainty associated with estimates of the effectiveness of control technology and housekeeping practices and their related costs. OSHA is confident that a 10 ppb PEL can generally be reached and maintained on an 8-hour TWA basis but is unsure that all industry sectors could generally achieve a 1 ppb PEL.

OSHA has estimated the total annualized compliance cost (for production workers) as \$10 million for the 10 ppb permissible exposure limit. The major component of the estimated costs for production workers are the costs of hygiene facilities and practices, which constitute approximately 50% of the total estimated costs for the 10 ppb PEL. The second major element of cost is for protective clothing and equipment, which is approximately 30% of the total cost of compliance of achieving the 10 ppb PEL. Housekeeping costs constitute approximately 10% of the total estimated costs. The estimated costs of engineering controls constitute only a small percentage (4%) of the total estimated annualized costs of compliance for production workers.

e. Economic Feasibility Analysis

The overall conclusions reached by OSHA regarding economic impact assessment are: (1) Most, if not all, of the affected industries ought to be able to pass the regulation's costs through to product purchasers (because of market and other considerations described below); (2) any price increases required are not likely to be very large, relative to the pre-regulation prices of the products; and (3) to the extent that prices of products do not rise (so that pass-through of these regulatory costs to product purchasers does not occur), the regulatory costs are not large relative to the other production costs and the net income of the companies examined. Consequently, OSHA has concluded that the final regulations will not pose a substantial burden to the affected industries, their employees, or consumers of their products.

Hence, OSHA's conclusion is that it is economically feasible for the eleven principal industry sectors to comply with the provisions of the MDA

standard and that none of the sectors studied by OSHA would experience significant economic impacts.

f. Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980 (Pub. L. 96-353, 94 Stat. 1164 [5 U.S.C. 601 *et seq.*]), OSHA has given special consideration to the mitigation of the economic impacts of the final standard on small entities. OSHA does not anticipate that the standard would adversely affect small entities.

In developing a standard for occupational exposure to MDA, OSHA carefully considered size factors such as number of employees, total assets, and gross revenues to ensure that the final standard would minimize the impact on small firms while continuing to protect workers. Furthermore, OSHA determined in the economic feasibility analysis that most, if not all, of the affected industries would be able to pass the regulatory costs through to product purchasers reasonably rapidly. Thus, most of the affected firms probably will not have to bear all of the compliance costs for these regulations.

Finally, OSHA examined the financial conditions of a sample of firms affected by the regulations and determined that even if these firms were to bear the compliance costs of the regulations, these would not impose substantial burdens for these firms. Therefore, OSHA concluded that the regulation will not significantly affect small entities.

g. Assessment of Nonregulatory Alternatives

OSHA believes that there are no nonregulatory alternatives that would adequately protect most workers from the adverse health effects associated with MDA exposure. The tort liability and Workers' Compensation systems do not provide adequate worker protection due to their unpredictability and inconsistency from state to state. Other government regulations do not provide adequate worker protection due to their limited scope. OSHA does not have a current workplace standard for occupational exposure to MDA; thus, no regulatory protection is currently being provided [Note: many employers offer voluntary protection e.g. personal protective equipment, showers, change rooms, etc.].

Summary. In the NPRM OSHA discussed the economic and technological feasibility of implementing the proposed standard for occupational exposure to MDA. OSHA found that the 10 ppb PEL, the 100 ppb STEL, and the accompanying standard provisions will substantially reduce the risk to worker

health; and that the standard is feasible. OSHA's findings regarding the economic and technological feasibility of implementing the proposed standard were not challenged. In light of the above, OSHA concludes that this final standard is feasible.

Construction Industry

OSHA examined the following three regulatory alternatives in the analysis: (1) A 20 ppb (0.160 mg/m³) PEL with a 10 ppb action level, (2) a 10 ppb (0.08 mg/m³) PEL with a 5 ppb action level, and (3) a 1 ppb (0.008 mg/m³) PEL with a 0.5 ppb action level. Implementing a STEL was assumed to be technologically feasible for any of the TWA/PEL alternatives examined because the controls needed to reduce the TWA would also assure that the STEL is met. OSHA's findings are as follows:

- It is technologically feasible for the construction industry to comply with a 10 ppb PEL by installing some readily available engineering controls and incorporating some new work practices. Although it may also be feasible for some construction applications to achieve lower limits, this is greatly dependent upon the technique for application. The method for achieving the PEL is dependent on the method of application. If roll-on application is being used, it is easier to reduce exposures below the required PELs through use of very limited technology. On the other hand, when application is through spray technique it may be that a respirator, in addition to engineering controls and workpractices, would be necessary to achieve compliance with the PEL. Use of a respirator, because the type required for spray application is the most effective, would result in exposures below the required PEL.

- Lowering the PEL from the present exposure levels in the workplace to 10 ppb, in conjunction with other provisions of the standard, would result in annualized compliance costs of approximately \$355,428/year.

- The standard is economically feasible for the construction industry and will not significantly affect either the competitive structure or the long-term profitability of these sectors.

- The standard is economically feasible and will not result in significant or differential impacts on small business establishments covered under the scope of the standard.

- There are no nonregulatory alternatives that adequately protect most workers from the adverse health effects associated with MDA exposure. A summary of the benefits and costs estimated for the PEL of 10 ppb and two

other alternative PELs (20 ppb and 1 ppb) is provided in exhibit 12, OSHA's PRA. The remainder of this discussion summarizes the analyses upon which these findings are based.

a. Industry Profile

For the purposes of estimating costs, risks, and benefits, OSHA made a number of reasonable assumptions in order to estimate the number of potentially exposed employees. These assumptions are based on the amount of MDA which reportedly goes into paints and coatings, the rate (lbs/hr) of paint application under spray and roll-on conditions, and the average hours of work of a typical painter. Assuming that 200,000 lbs of MDA are used yearly in coatings¹, and that it constitutes 20% by weight of the final product, OSHA estimated that one million pounds of MDA-containing coatings are applied each year. Estimates provided to OSHA by the International Brotherhood of Painters and Allied Trades suggest that the average application rate of spray methods is 20 lbs/hr, while that for the roll-on methods is 30 lbs/hr. OSHA combined these estimates with the assumption that a typical painter spends only four hours/day painting², with the rest of the time taken up by preparation, set-up and clean-up of work areas. OSHA assumed, in the absence of any available data, that a typical painter would spend only 10% of his work time (25 days) each year using MDA-containing coatings³. The result of these assumptions is that a typical painter would spend some 100 hours/year applying MDA coatings.

For spray applications, each painter would thus apply 2000 lbs/yr; and for roll-on application, 3000 lbs/yr⁴. Since

an estimated 400,000 lbs of MDA paint are consumed each year in spray operations and 600,000 lbs in roll-on operations, the sum of these assumptions yields an estimate of 200 potentially exposed workers (400,000 lbs/yr divided by 2000 lbs/worker year) in spray operations and 200 workers (600,000 lbs/year divided by 3000 lbs/worker-year) in roll-on applications. These estimates are obviously tenuous, but OSHA considers them the best available evidence and a reasonable basis to estimate costs, risks, and benefits. OSHA believes that both spray and roll-on application methods entail risk of airborne and dermal exposure. Spray applications, in the view of OSHA, are especially likely to pose potentially serious hazards. In addition, OSHA is aware of two reported cases involving acute hepatitis after application of MDA-containing coating products, and sources in the scientific literature and at least one trade union have reported that skin problems are common among painters using epoxy paints (52 FR 26847). The latter reports confirm the common occurrence of dermal exposures, and thus the potential for skin absorption of MDA.

For the purpose of risk estimation in spray operations, OSHA assumed that TWA airborne levels of exposure to MDA could reasonably be estimated to be similar to those experienced by maintenance workers, 250 ppb (2 mg/m³)⁵. Dermal exposure levels were also assumed to be 0.50 mg/cm²-hr for the palms and 0.00134 mg/cm²-hr for the forearms and upper body. These are twice that expected for maintenance workers. OSHA believes that the spray applications presented twice the potential for skin deposition and absorption as would be expected for maintenance workers. For manual roll-on applications, it is reasonable to assume lower levels of both airborne and dermal exposures. OSHA estimated that airborne and dermal exposures would be comparable to those estimated for the polyurethane curing sector, or 0.160 mg/m³ (airborne), 0.25 mg/cm²-hr for the palms, and 0.00067 mg/cm²-hr for the forearms and upper body.

OSHA has estimated that 400 workers are exposed to MDA-containing paints and coatings, 200 in spray applications and 200 in roll-on applications. Based on the limited data available, an average of 6 painters per employer or firm was assumed. The total number of

potentially affected firms would thus be approximately 66 (400 workers/6 workers per firm). Spray applications were assumed to entail higher exposure, both airborne and dermal, than roll-on applications. Data describing exposure levels, number of employers, or number of employees were not available to OSHA, so that the exposure profiles were constructed with the use of reasonable assumptions.

b. Benefits

In this section, OSHA estimated the potential benefits (in terms of deaths avoided) accruing as a result of its standard for the Construction Industry. The analysis of this section demonstrates that as a result of the standard approximately .042 painters applying MDA containing coatings through spray applications and .019 painters applying MDA containing coatings through roll-on applications will be saved for every year of reduced exposure by establishing a permissible exposure limit of 10 ppb and by establishing requirements to limit dermal exposure to MDA. A significant proportion of the estimated lives saved are the result of the reduction in dermal exposure, whereas the reduction in airborne exposure levels makes a much smaller contribution to the reduction in risk.

While OSHA was able to estimate the benefits from reducing the risks due to occupational cancer, it was unable to quantify the effects that the standard's provisions would have on reducing other occupational risks resulting from MDA exposure (e.g., reduced incidence of dermatitis, liver toxicity, etc.).

c. Technological Feasibility

This section assesses the technological feasibility of achieving the alternative levels. OSHA has reviewed the technological feasibility and believes that while it may be feasible and necessary in some instances to use local or general exhaust ventilation to reduce exposures, these controls alone will not provide adequate protection for painters (applying coatings through spray application). These controls in conjunction with the use of respiratory protection will be necessary to ensure that workers applying paints through a spray technique are adequately protected. In many instances, OSHA believes that it will not be feasible to use local or general exhaust ventilation, and in these cases only respiratory protection will be used. OSHA recognizes that many coating applications in the Construction Industry will be to concrete structures,

¹ ICF, Inc. provided this estimate for OSHA in its preliminary technological and economic analysis. Thus the Committee made use of the 200,000 lbs. per year figure in its computations. The International Brotherhood of Painters and Allied Trades provided the estimates that the paint was composed of 20% MDA and 80% other products. (ex. 9)

² The number of hours per day engaged in painting operations was furnished by Research Triangle Institute in a document prepared for OSHA in 1980 entitled "Economic Impact Statement for Abrasive Blasting." (ex. 9)

³ Estimated from discussions with representatives of the International Brotherhood of Painters and Allied Trades. Since approximately 1 million pounds of this are MDA coatings, the Committee conservatively estimated that MDA containing coatings are approximately 10% of the applied coatings and should require 10% of the workers time to be applied. (ex. 9)

⁴ The estimate of 2000 lbs/yr for spray painters and 3000 lbs/yr for roll-on application came from the discussions with the International Brotherhood of Painters representative. (ex. 9)

⁵ Support for OSHA's assumptions is provided in a spray painting evaluation by NIOSH which found that paint mist concentrations ranged from 2.0-43.3 mg/m. Assuming 20% MDA by weight, then the mist would range from 0.4-8.7 mg/m³ respirable MDA.

pipes, flooring, etc. These surfaces may be located inside or outside of buildings but are usually outdoors. It is oftentimes difficult to use traditional control technologies in these instances.

However, OSHA acknowledges that some of these construction activities may be conducted inside of facilities or perhaps in confined spaces (e.g., tanks, pipes). In these instances, OSHA expects that employers will provide the usual and necessary engineering controls in addition to the necessary respiratory protection. OSHA also recognizes that the use of engineering controls in these instances is mandated by existing OSHA regulations (e.g., confined spaces, spray painting).

For purposes of feasibility, OSHA believes that compliance will be achieved primarily through the use of the appropriate respiratory equipment and not through the use of engineering controls. OSHA makes these conclusions based on its findings that in the construction sector MDA appears to be used exclusively in coating application. No other use was identified. While workers applying coatings through roll-on techniques were not expected to need respirators, those engaged in spray application would be required to use a respirator.

Based on the analysis discussed above, the following determination of feasibility in these sectors was reached by OSHA:

- It is technologically feasible for the painters applying MDA-containing coatings to achieve compliance with a PEL of 10 ppb or less through the use of the appropriate engineering controls and workpractices along with the use of respiratory protective equipment for spray operations.

- It is also considered feasible to limit dermal exposure by the use of appropriate personal protective equipment and clothing, and through other means as required under the final standard.

d. Costs of Compliance

This discussion presents estimates of the compliance costs that would be incurred by employers in the Construction Industry subsequent to the promulgation of a PEL of 10 parts per billion (0.08 mg/m³), with an action level of 5 parts per billion. The cost to achieve this PEL would be the result of the use of personal protective equipment, hygiene measures, education, and other measures. The costs of engineering controls are not included in the analysis, since such controls would only occasionally be implemented. The total estimated cost of compliance is \$355,428/year for the entire sector to

achieve compliance with any of the PELs whether it be 1, 10, or 20 ppb.

e. Economic Feasibility and Regulatory Flexibility Analysis

In accordance with Executive Order No. 12991 (46 FR 13193, February 19, 1981), OSHA has assessed the potential economic impacts of the MDA standard. The final determination is that the regulatory requirement limiting MDA exposure in the workplace, including PEL levels reduced to 10 ppb, will not result in significant adverse economic impact on any of the industry sectors for which detailed financial and compliance data are available.

Pursuant to the Regulatory Flexibility Act of 1980 (Pub. L. 96-353, 94 stat. 1164 (5 U.S.C. 601 *et seq.*)), consideration has been given to the mitigation of the economic impacts of the final standard on small entities. Based on the available data, it is not anticipated that the final standard would significantly affect a substantial number of small entities.

The final standard limiting exposure to MDA in the construction industry affects workers in approximately 66 firms. OSHA conducted an assessment of the economic impact on these 66 firms and has determined that it is minimal based on the nature of the applications involved and the probability that these compliance costs will be passed through to the purchasers of their services. The supporting analysis for this finding is presented below, and is based on the same methodology for determining economic impacts used to assess the impact of the proposed regulations on the producers and primary users of MDA.

The annualized compliance costs faced by the affected construction firms will be approximately \$5,450. Several factors suggest that these costs will be passed through to the purchasers of the services of these construction firms. First, the purchasers of these firms' services are large firms and government entities managing large projects (e.g., chemical plants, reactors, and defense-related activities). As such, the incremental costs associated with limiting worker exposure to MDA are likely to be extremely small relative to the economic size of these projects. Second, in many cases, contractual and engineering specifications may require that the MDA-related products be used for their desirable physical properties. In these cases, the incremental compliance cost will certainly be passed through to these purchasers. Given these considerations, it is likely that these compliance costs will be fully passed through in a relatively short period of time.

If these compliance costs are passed through to purchasers of these firms' services, the increase in the price of these services is likely to be extremely small. The annual compliance costs per firm are quite low, and constitute a small portion of each firm's total operating cost. Thus the compliance costs of several thousand dollars per year are unlikely to result in price increases leading to contractor failures or employment contractions.

Finally, if the compliance costs are not passed through to the purchasers of the services of these affected firms, given the size of the incremental costs, it is highly unlikely that these costs would pose a significant burden to the firms involved. Relative to the workers' salaries and other costs of construction activities affected by the regulations, the incremental compliance costs of \$5,450 per firm are extremely small.

Based on these considerations OSHA concludes that the final standard will not cause significant economic impacts to the affected construction firms because the compliance costs are small relative to the economic size of the affected firms and the activities into which these construction services are inputs.

Summary. OSHA has reviewed the economic and technological feasibility of implementing the final standard for occupational exposure to MDA in the construction industry. OSHA finds that the 10 ppb PEL, the 100 ppb STEL, and the accompanying standard provisions will substantially reduce the risk to worker health, and it is feasible. OSHA's findings regarding the economic and technological feasibility of implementing the proposed standard were not challenged. In light of the above, OSHA concludes that this final standard is feasible.

IX. Summary and Explanation of the Standard for General Industry

Paragraph (a). Scope and Application

(a)(1) OSHA's final standard applies to all "occupational exposures" to MDA with the specific exceptions set forth in the scope and application section and would apply to all workplaces in all industries, except for construction, where MDA is produced, released, stored, handled, used, or transported, and over which OSHA has jurisdiction.

OSHA developed a separate standard for the construction industry, § 1926.60. The two standards, general industry and construction, do, however, cover all industries covered by the Act. The general industry standard covers all activities and operations including ship

repair and rebuilding, manufacturing, secondary processing, and downstream use of MDA. Employees of the Construction Industry are covered by the construction standard. Construction activities are defined in 29 CFR 1910.12(b) as work for construction, alteration and/or repair, including painting and decorating.

As noted above, ship repair and shipbreaking activities are covered by the general industry standard. OSHA believes the provisions of the general industry standard are appropriate for the operations involving MDA which will occur on ships. (See the new 29 CFR 1910.19(i) that is promulgated below.)

(a)(2) This paragraph contains exclusions for workplaces that process, handle, or use products containing MDA where initial monitoring data show that the product cannot release MDA at or above the action level and where no "dermal exposure to MDA" can occur (see discussion under Paragraph (b), Definitions, as to what constitutes "dermal exposure to MDA"). The criterion for exemption under paragraph (a)(2) requires monitoring data that show that the material is incapable of releasing airborne MDA at or above the action level under the expected conditions of processing, handling or use. The material also must not be a material that results in "dermal exposure to MDA," as defined. Paragraphs (a)(8) and (e)(5) are exceptions to this exemption. Since the exemption is based on initial monitoring, paragraph (a)(8) requires that these monitoring records be maintained. Similarly, paragraph (e)(5) requires additional monitoring when changes occur that might affect employee exposure.

This exemption and the underlying rationale for this exemption were adopted by OSHA from the Mediated Rulemaking Committee's recommendations (exhibit 9). During the Committee's deliberations, various situations were discussed pertaining to this exemption which the Committee believed should be excluded from the requirements of any final regulations. For example, MDA based epoxy resins are often shelved in hardware stores. Unless the containers are broken, these resins pose no hazard for employees stocking shelves etc. In this situation, it is clear that handling these materials does not result in exposures above the action level nor will dermal contact with the MDA material occur. A second example involved the mechanical transportation of MDA through an automated piping system. Unless the pipe ruptures, the Committee believed

that it was not possible for employees to be exposed to MDA transported in this manner. Thus dermal exposure was not expected. Therefore, the Committee believed that this type of situation should also be excluded from the standard.

In both of the examples described above, the Committee only addressed worker exposure which resulted from either ambient exposure above the action level or the potential for dermal exposure to non-airborne forms of MDA. Consideration was not given to any dermal exposure which might result from ambient exposure and subsequent "fall out" (airborne particles or vapors settling on the skin). It was the Committee's belief that dermal absorption hazards resulting from this "fall out" of airborne MDA had already been adequately addressed by establishing very low permissible exposure limits and action level. OSHA fully concurs with the Committee on these points. The exemption, under paragraph (a)(2), therefore, is available when two conditions exist, i.e., exposure above the action level does not occur and "dermal exposure to MDA," as defined, is not possible.

(a)(3) This paragraph allows the employer to rely on objective data as the basis for an exemption when the data indicate that MDA is not capable of being released ambiently and where no "dermal exposure to MDA" can occur. OSHA believes that the primary and intermediate users will be in the best position to test their products and to supply the necessary objective data. The final standard would not require downstream employers to generate their own objective data on the MDA levels likely to be released from a product if they can obtain it from producers or other processors. There was no objection to the proposed allowance of the use of "objective data" as exemption criteria. Thus, the final standard contains this provision as specified in the proposed rule.

(a)(4) The final standard also exempts the storage, transportation, distribution, or sale of MDA in intact containers sealed in such a manner as to contain the MDA dusts, vapors, or liquids, except for the provisions of 29 CFR 1910.1200 as incorporated into this standard and the emergency provisions of this standard. Containers are covered by the Hazard Communication standard, 29 CFR 1910.1200 [52 FR 31852; Aug. 24, 1987], which requires, in conjunction with the MDA standard, labeling containers to indicate that they contain MDA (a suspect carcinogen), employee training specifying what to do if the

container was opened or broken, and supplying material safety data sheets to users/employees.

The basis for this exemption is that sealed containers are unlikely on a regular basis to leak sufficient MDA to expose employees over the action level or pose a dermal exposure problem. The labeling and training provisions of the Hazard Communication standard provide sufficient protection in those situations where a container breaks so that employees will know how to handle and clean up a spill safely. The intention of this exemption is to cover most warehouses, distributors, supply rooms, and similar operations where chemical containers are stored, transported, or sold, and not normally opened. However, operations where the containers are opened and the contents used or tested would be covered by the standard because of the possibility of exposure in excess of the action level or dermal exposure.

Other than the concerns over the omission of the 0.1% exclusion, there was no comment on this paragraph. The 0.1% exclusion is addressed in relation to paragraph (a)(6) and that discussion applies to this paragraph as well.

(a)(5) This paragraph contains provisions establishing a separate standard for construction and excluding construction activities from the scope of the general industry standard.

(a)(6) This paragraph was not contained in the NPRM. It establishes a *de minimis* exclusion for MDA mixtures or materials which contain MDA in concentrations of less than 0.1% by weight or volume. OSHA implicitly incorporated a *de minimis* exclusion in its NPRM as recommended by the Committee. In OSHA's notice of hearing found at 55 FR 2101 (January 22, 1990), OSHA clearly states,

The exclusion found in the proposed MDA rule, although not explicit, implicitly states that a 0.1% exclusion will be part of the MDA rule.

OSHA was guided in adopting this exclusion by the data furnished by the Mediated Rulemaking Committee. In the recommendations rendered by the Committee, data were provided which indicated that worker exposure to mixtures or materials of MDA containing less than 0.1% MDA did not create any hazards other than those expected from worker exposure beneath the action level (ex. 9). Additionally, the requirements found in 29 CFR 1910.1200 (d)(5) state,

* * * that the mixture shall be assumed to present a carcinogenic hazard if it contains a component in concentrations of 0.1 percent or

greater which is considered to be a carcinogen . . .

Thus, having given consideration to both the Committee's recommendations and OSHA's Hazard Communication standard provisions, OSHA decided in the NPRM to be consistent with the Hazard Communication requirements. This exclusion was the basis for the majority of the concerns expressed by the commenters to the NPRM. As a result of these concerns OSHA, in its Federal Register notice of January 22, 1990, invited testimony on,

* * * the appropriateness of expressly establishing a 0.1% exclusion by weight or volume for all operations involving mixtures containing MDA from the proposed regulation. (Id.)

In addition, several commenters and hearing participants recommended a *de minimis* percentage exclusion of 0.1% be adopted, thus reflecting the Hazard Communication standard (Lockheed, Ex. 11-22; United Technologies, Ex. 11-23; Monsanto, Ex. 11-26; United States Air Force, Tr. II-5; etc.). On the other hand, no data were furnished by any of the hearing participants or in the post-hearing comments which would suggest that establishing a 0.1% exclusion, as suggested in the hearing notice, would not be appropriate. Thus, OSHA has added to the scope and application section of both the general industry and the construction standards a paragraph adding this percentage exclusion.

(a)(7) The final standard contains an exemption for "finished articles containing MDA". (See discussion under Definitions)

(a)(8) This paragraph requires that the employer appropriately document the information which supports any exemption, and the employer must maintain a record of this information. There was no comment made to the provisions contained in this paragraph. The final standard contains this paragraph as originally proposed.

Paragraph (b). Definitions

Paragraph (b) of the final MDA standard for general industry defines a number of terms used in the standard. In some instances, the definitions are consistent with those found in other OSHA standards, e.g., "Director," "Assistant Secretary," and "Authorized person". However, certain other terms will be discussed to clarify their meanings in this standard.

Action Level

OSHA establishes an "action level" of one-half of the established TWA in the final standard. The purpose of the action level is to relieve the burden on

employers by providing a cut-off point for required compliance activities under the standard.

The statistical basis for determining the action level is discussed in connection with several other OSHA health standards (see, for example, Acrylonitrile, 43 FR 4794). In brief, although all measurements on a given day may fall below the permissible exposure limit, some possibility exists that on unmeasured days the employee's actual exposure may exceed the permissible limit. Where exposure measurements are above one-half of the permissible exposure limit, i.e. the action level, the employer cannot reasonably be confident that the employee may not be overexposed. (Leidel, N.A. et al., "Exposure Measurement Action Level and Occupational Environmental Variability," DHEW, PHS, DCD, NIOSH, DLCK (August 1975)). Therefore, requiring periodic employee exposure measurements to begin at the action level provides the employer with a reasonable degree of confidence in the results of the measurement program.

In the absence of a demonstrated safe level of exposure for a carcinogen, it is appropriate to begin some protective actions, for example monitoring provisions, shower requirements and medical surveillance, at one-half the PEL or, in the case of MDA, 5 parts per billion. Establishing an action level serves such a purpose, as well.

Emergency

The final standard includes a definition of an emergency. Emergency is defined to mean any occurrence such as, but not limited to, equipment failure, rupture of containers, or failure of control equipment which results in an unexpected and potentially hazardous release of MDA. Sections of the final standard that include provisions to be met in case of emergencies include respiratory protection, medical surveillance, and employee information and training.

There was some comment on the NPRM regarding the definition of an emergency situation. Objectors argue that the courts have restricted the requirement for implementing an emergency plan to circumstances where the probability of harm is present rather than requiring emergency provisions be triggered by the potential for a hazardous release. They argue that the definition contained in the proposed rule, because of the over inclusive nature of the term "potential," requires that an emergency plan, including alarms, evacuation, and all other elements specified in § 1910.38, be

implemented in situations which are questionably emergencies.

General Dynamics (ex. 11-9), on the other hand, reads the definition of emergency very narrowly to mean that only primary manufacturers need establish emergency programs.

OSHA reviewed all of the comments regarding the definition of an emergency and believes that the language recommended by the MDA Mediated Rulemaking Committee and proposed by OSHA in the NPRM is the appropriate language. OSHA acknowledges that every spill or leak does not constitute an emergency situation. The exposure to employees must be significant and pose a hazard. OSHA believes that this is a performance oriented provision relying on judgement and that it is not possible to specify detailed circumstances which constitute an emergency. Further, OSHA believes that the definition as proposed allows the employer sufficient flexibility in exercising judgement as to which situations constitute an emergency. In addition, the emergency provisions of this standard are consistent with similar provisions of other OSHA toxic substance standards (See for example, 29 CFR 1910.1003-.1016, 1910.1017(i), 1910.1045(i), and 1910.1047(h)).

Employers must provide emergency plans and employees must be trained to implement these plans. The definition is promulgated as proposed.

Employee Exposure

OSHA's final regulation also defines "employee exposure" to mean that exposure which would occur if the employee were not using a respirator or personal protective equipment. The employee's exposure measurements would be made without regard to any use of personal protective equipment. OSHA believes that exposure monitoring is not a single-purpose activity. It is necessary to know employee exposure levels without the use of respiratory protection or personal protective equipment to evaluate the effectiveness of engineering and work practice controls and to determine whether additional controls must be instituted. In addition, monitoring is necessary to determine which respirator, if any, must be used by the employee. This definition is consistent with OSHA's previous use of the term "employee exposure" in other health standards.

Finished Articles Containing MDA

The final standard exempts "finished articles containing MDA" from the regulation. A "finished article containing MDA" is defined as a manufactured

item: (i) Which is formed to a specific shape or design during manufacture; (ii) which has end use function(s) dependent in whole or part upon its shape or design during end use; and (iii) where applicable, is an item which is fully cured by virtue of having been subjected to the conditions (temperature, time) necessary to complete the desired chemical reaction.

As discussed below, OSHA is basing this action on testimony by rulemaking participants that end use articles, including cured articles, do not present a hazard with respect to exposure to MDA; on quantitative data evaluating the extent to which unreacted residual MDA remains on or within finished articles; and on experience gained by OSHA during development of its Hazard Communication standard (48 FR 53280).

The Air Force, in its testimony, recommended "... exempting finished articles from the standard, and the definition of 'finished article' should include fully cured products, that is, those that a user may only have to drill assembly holes or finish sand and this goes back to the hazard communication standard" (TR. 2-5). The Air Force further commented that:

In our testimony we recommended finished articles be exempted from the MDA ruling [sic] and further recommended the definition of finished article include cured products. Our definition of a cured product is any item which has been subjected to the conditions [necessary] to complete the desired chemical reaction. The purpose of this definition is to exempt those composite parts which only require final machining (limited to debarring and final hole drilling) but not exempt prepreg materials which can be further cut and shaped to form a final product. (ex. 35).

Exemption for cured, MDA products was also supported by Dr. JoAnne Pigg, a technical health professional member of the OSHA Mediated Rulemaking Advisory Committee:

I recommend that all cured materials utilizing MDA including adhesives, encapsulates, coatings, etc., in addition to composites, be exempted from requirements of the proposed standard. It is agreeable that finite, but undetectable levels of MDA can exist in those materials, but no health hazards from employee exposure exist. (ex. 20).

With respect to the question of why curing eliminates concern over MDA exposure, Brunswick testified that:

During the curing process the MDA is cross linked chemically with the epoxy resin or polymerized with the polyamide resins. The cross linking results in a formation of a solid epoxy product. The raw components, MDA, epoxy resins and polyamide resins lose their identity in the process that is not reversible. The resulting mass of cured resin is

considered to be a non-hazardous product as defined by the EPA (tr. 1-194).

The CMA pointed out that "... curing procedures and times and temperatures are all designed ... to ... [result in products that are] ... essentially MDA-free," and "... if they are improperly cured ... then they're not going to have the physical properties that the supplier was trying to impart to them." (tr. 1-205).

Sampling data submitted to the record substantiates the assertion that it is appropriate to exempt cured MDA materials from the standard. Data were submitted by Sandia National Laboratories (ex. 20B) on three cured materials: An epoxy containing 25% MDA, a polyurethane containing 10% MDA and a polyamide formulation containing 4% MDA. Wipe sampling performed on the products after full completion of the curing processes revealed no free or unreacted MDA at the detection method limits of 0.2 micrograms per hundred square centimeters. Sandia indicated that these materials were tested for unreacted surface MDA because "... when it's cured it certainly ... would be physically bound inside but we wanted to make sure there was nothing on the outside ..." (tr. 1-185).

In addition to surface sampling for MDA, Sandia analyzed dust generated from drilling of a finished cured circuit board derived from the polyamide formulation containing 4% MDA. Analyses revealed the dust to be free of MDA at the limit of detection of 2 ppb (tr. 1-182). Rhone-Poulenc, Inc. testified that "... final products produced from our resins do not contain detectable MDA. For example, test efforts to detect free MDA in copper clad cured laminates to a detection level of 0.0001 percent had been unsuccessful." (tr. 1-134).

Finally, the Air Force cited data showing "... swipe samples averaging 0.4 micrograms per 100 centimeters squared used in an epoxy putty which air cures." (tr. 2-7). Although measurable surface MDA was detected on this material, the Air Force submitted calculations illustrating the relative degree of health hazard associated with such exposure. The Air Force estimated that a surface contamination of 2,400 micrograms per 100 square centimeters would be required in order to pose a health risk equivalent to that of the proposed 10 ppb airborne exposure. The Air Force asserted that it is unlikely that cured products would ever have surface contamination approaching this level. (ex. 35).

Based on comment and data in the record, such as that cited above, OSHA concludes that it is appropriate to exempt finished articles containing MDA, including cured products, from the requirements of the MDA standard. OSHA is convinced that finished articles do not present a health hazard to employees to the extent that it is necessary to regulate such hazards under the MDA standard. OSHA believes that the health benefits derived from compliance with this rule will best be served by obligating employers to focus resources on control of employee exposure to MDA forms and uses only in those instances where a health hazard exists.

The specific language in the definition of "finished articles containing MDA" is derived from two sources. Items (i) and (ii), discussed further below, are taken from the definition "article" in the Hazard Communication standard which defines items exempt from that rule. Item (iii) has been adopted from language recommended by the Air Force (ex. 35) for use in identifying what a cured product is (e.g. "... subjected to the conditions necessary to complete the desired chemical reaction.")

OSHA believes that the language in item (iii) is sufficiently explicit that employers know at what stage their products can be considered fully cured for the purposes of this regulation. The term "... subjected to the conditions ..." clearly means that the article must experience its full curing time at the temperatures designed to effectuate the curing process. The article will be considered cured if the desired chemical reaction has been completed as a result of it having been subjected to the specified curing time(s) and temperature(s). Items (i) and (ii) under the definition are derived from OSHA's Hazard Communication standard, as was suggested during the rulemaking hearing (tr. 2-6). The Hazard Communication standard exempts any "article" which, defined in part, is a "... manufactured item: (i) which is formed to a specific shape or design during manufacture; [and] (ii) which has end use function(s) dependent in whole or in part upon its shape or design during end use." For example, pre-pregs, by their very design and application, would ordinarily not be exempted by the "Finished Article" criteria. (See ex. 11-24, ex. 19A, tr. 1-136.) The preamble to the Hazard Communication standard explains the rationale underlying this exemption as follows:

Several commenters suggested that OSHA exempt "articles" from the scope of the standard. The purpose of this exemption is to

ensure that items which may contain hazardous chemicals, but in such a manner that employees won't be exposed to them, not be included in the hazard communication programs. Examples of such items would be nuts and bolts or tools. The exemption has been added to the final standard and a definition was added as well. It was further suggested that OSHA adopt the definition for "article" used by the Environmental Protection Agency (EPA) under the Toxic Substances Control Act (TSCA). OSHA found that the definition used by EPA was appropriate for this standard in part. The EPA definition in part is essentially as follows: "article" means a manufactured item: (i) which is formed to a specific shape or design during manufacture; and (ii) which has end use function(s) dependent in whole or in part upon its shape or design during end use. 48 FR 53280

For the same reasons cited under the Hazard Communication standard, parts (i) and (ii) of EPA's definition of "article" is being adopted by OSHA under the MDA standard.

Dermal Exposure to MDA

The final standard requires the employer to take certain protective actions where employees, engaged in the handling application or use of mixtures or materials containing MDA, are subject to dermal exposure to MDA. "Dermal exposure to MDA" can occur with any of the following non-airborne forms of MDA: (i) Liquid, powdered, granular, or flaked mixtures containing MDA in concentrations greater than 0.1% by weight or volume; and (ii) materials other than "finished articles" containing MDA in concentrations greater than 0.1% by weight or volume. In situations where employees handle, apply or use any MDA mixtures or materials as defined above, dermal exposure to MDA is considered to occur. The agency believes that correlating dermal exposure with handling, applying or using specific forms of MDA removes the confusion that has arisen from using such terms as "likelihood of dermal exposure." Simply put, dermal exposure to MDA is assumed to occur when employees handle, apply or use any MDA falling under the definition of "Dermal exposure to MDA." Where such exposure occurs employers must do the following: provide affected employees with appropriate protective equipment, as required under paragraph (i) of this section; establish regulated areas, as required under paragraph (f) of this section; establish hygiene practices and lunch areas, as required under paragraph (j) of this section; and implement a medical surveillance program for affected employees as required under paragraph (m) of this section.

OSHA believes that the protective measures prescribed under the paragraphs cited above are necessary in order to minimize the adverse health effects associated with dermal exposure to MDA. OSHA's risk assessment analyzed the risk associated with dermal exposure and found that a 20 fold increase in risk could be prevented by not allowing dermal contact with MDA. MDA is easily absorbed through the skin at the rate of 2 $\mu\text{g}/\text{cm}^2$ per hour. In addition, recent studies by El-hawari (ex. 1-251) indicate that the absorption of MDA peaks 5 hours after the end of the work shift and that 80% of the substance is cleared from the body within 24 hours of exposure. It is difficult to correlate the amount deposited on the skin with a biological indicator, such as the amount found in the urine, because of the characteristics of MDA absorption and elimination in humans. MDA easily enters the body through the skin. Once deposited on the skin absorption continues although the worker may have long since left the work place and the apparent exposure area. Once absorbed into the body the chemical is rapidly eliminated so that using a biological indicator, such as urine measurement, may not detect the apparent exposure. All in all, MDA can be considered a chemical with poor biological warning properties or biological indicators of exposure. The best protective measures which can be taken are to prevent skin contact and subsequent absorption by regulating the handling, applying or using of forms of MDA which can result in "dermal exposure to MDA." This will in turn reduce both the risk of cancer and the potential for hepatotoxicity.

Regulated Areas

Regulated areas are defined as areas where MDA concentrations exceed or can be reasonably expected to exceed the permissible exposure limits or where employees are engaged in the handling, application, or use of MDA that can result in "dermal exposure to MDA."

Definition of MDA

The final standard includes a definition of MDA. Included in the definition are the salts of MDA. The rationale for including the salts in the definition of MDA was not challenged in the response to the NPRM. Thus the compounds covered by the proposed definition remains the same in the final standard.

The NPRM definition contained an exclusion for finished products which is now part of the scope and application section of this final rule.

Paragraph (c). Permissible Exposure Limit (PEL)

The final standard will limit exposure to MDA by establishing a PEL of 10 ppb as an 8-hour TWA. In addition, OSHA believes that airborne exposure will be further reduced by establishing a STEL for airborne MDA exposures of 100 ppb determined in any 15-minute sampling period. (See discussions at 52 FR 26858 and 54 FR 20702). The requirements contained in the final standard are supported by OSHA's findings that occupational exposure to MDA under current occupational conditions poses a significant risk to the health of employees and that the final standard can achieve a substantial reduction in that risk. The permissible exposure limits proposed by OSHA have not been challenged by the rulemaking participants. Thus, the requirements in the final standard remain the same as proposed.

While the permissible exposure limits were not challenged, many of the commenters suggested a biological indicator as a permissible exposure limit. Specifically, the commenters recommend that OSHA adopt an acceptable level of MDA which can be detected in the urine as a permissible exposure limit. Additionally, they contend that the absence of any detectable level of MDA in the urine or a level below the established standard should be used to exclude an employer from coverage of the standard. This concept is similar to that of using the action level as a point below which compliance with specific provisions of the standard is not required. Dr. James Hathaway, the corporate medical director for Rhone-Poulenc Inc. states this position very precisely:

OSHA (should) include in the standard an option for employers to demonstrate lack of likelihood of significant dermal exposure through biological monitoring. Consistent findings at the end of the shift, end of work week levels of MDA in the urine of less than 160 micrograms per liter should exempt employers from provisions of the standard, other than the ones that would relate to an accidental exposure where, you know, I think it's logical then that certain things would have to be done. (tr. I, 132)

Dr. Hathaway made this recommendation based on earlier calculations which he had made in which he estimates the 5 ppb action level could be comparable to MDA urine levels of 160 $\mu\text{g}/\text{l}$. Thus, since the exposures were nearly comparable, he suggests that the risks were also comparable. (tr. I, 117-133)

The Boeing Co. through the written comments of James Vinson also urged

that OSHA make use of biological monitoring as a means of exempting the employer from the requirements of the standard. He states:

The regulation provides an exemption from the requirements where the likelihood of dermal exposure does not exist. It does not, however, provide a mechanism of determining the likelihood of dermal exposure. It is therefore proposed that OSHA require medical monitoring if the "no likelihood of dermal exposure" exemption is to be used. Urine MDA below 100 ppb, for example, would indicate no likelihood of dermal exposure and would allow an exemption from the requirements (ex. 14-7).

The use of urinary monitoring results to establish a biological PEL was considered by the Mediated Rulemaking Committee. The Committee's discussions were provided to OSHA as well as its recommendations (ex. 9). OSHA summarized the Committee's recommendations at 54 FR 20694 as follows:

It is difficult to correlate the amount deposited on the skin with a biological indicator, such as the amount found in the urine. There are many confounding factors which lead to these findings. Firstly, through absorption rates it is apparent that MDA easily enters the body. Secondly, once deposited on the skin absorption continues although the worker may have long since left the work place and the apparent exposure area. Thirdly, once absorbed into the body the chemical is rapidly eliminated so that using a biological indicator, such as urine measurement, may not detect the apparent exposure. All in all MDA can be considered a chemical with poor biological warning properties or biological indicators of exposure.

During the hearings, the Chemical Manufacturer's Association pointed out that the sampling protocol for MDA urinary monitoring is not sufficiently developed at this time to demonstrate a correlation between levels of MDA or its metabolites in the urine and disease development. Furthermore, they contend that there is no correlation between amount of metabolite found in the urine and the total body burden which can be attributed to this form of exposure. (tr. II, 173)

OSHA believes that the recommendations made by the Committee and the testimony provided by CMA regarding the use of biological monitoring are sound and for these reasons is not including a biological PEL in the standard. OSHA, on the other hand, agrees with NIOSH that biological monitoring has some practical application in the standard setting process. NIOSH states at tr. I, 25-28 that:

In regard to biological monitoring, NIOSH recommends biological monitoring to assess the degree of protection offered by the use of

recommended protective clothing and equipment, and to assess the effectiveness of other controls such as work practices * * * It may be noted that biological monitoring assesses exposure by all routes * * * dermal, inhalation and ingestion.

OSHA also recognizes that the recommendations made by NIOSH regarding the use of biological monitoring in the standard setting process are the same recommendations made by the Mediated Rulemaking Advisory Committee, i.e., biological monitoring can be effectively used to determine the effectiveness of personal protective clothing and equipment, engineering controls, or work practices. OSHA recognizes as did both these groups that if a positive urine sample is found and the worker is wearing personal protective equipment that some or all of the equipment is not operating effectively. The employer armed with this information can then attempt to determine the source of the exposure. Although OSHA does not require that the employer conduct biological monitoring to determine the effectiveness of engineering controls, work practices, or personal protective clothing or equipment, the employer can voluntarily use biological monitoring to supplement the safety and health program. OSHA will continue to review any technological developments regarding biological monitoring for MDA exposure. Additionally, OSHA will consider changes to the standard that involve the establishment of a biological PEL if evidence sufficient for regulatory purposes becomes available.

Paragraph (d). Emergency Situation

OSHA believes that the available health data suggest that elevated short-term exposure to MDA should be viewed with concern. OSHA believes that an unexpected high exposure must be viewed as an emergency situation. The final standard requires that a written plan be developed where there is a possibility of an emergency and that written procedures be developed for alerting employees in the event that an emergency occurs.

The standard provisions also include a requirement to alert employees other than those who have the potential to be directly exposed in an emergency situation. Such employees may be employees from neighboring work sites who may inadvertently approach the emergency site. They may also include employees from other work shifts or employees who may be later exposed to work surfaces or equipment contaminated as a result of the emergency.

OSHA also requires the development of a written plan for each workplace where there is a possibility of an emergency. The plan shall include the elements prescribed in 29 CFR 1910.38, "Employee emergency plans and fire prevention plans."

OSHA believes that the performance language of the emergency situation paragraph will give employers the flexibility to choose any effective method of alerting employees, including communications systems, voice communication, or a bell or other alarm. OSHA believes that emergency plans are necessary and must be made a part of every standard.

In response to the NPRM, some of the commenters expressed concern with the difficulties expected from implementing the emergency provisions of the standard. United Technologies (ex. 11-17) commented that emergency plans should only be required when there is a reasonable probability of MDA release in an emergency situation. They contend that the broadness of the term "possibility" makes every situation a potential emergency and thus becomes economically prohibitive. They commented that changing the term "possibility" to "probability" makes it easier to determine what is an emergency and when planning is required.

Many other commenters suggested that OSHA amend the requirement by changing the term "possibility" to "probability." The Brunswick Company states:

"Possibility" is an open-ended term that is defined in a legal term as presenting unlimited liability. "Probability" limits the scope of the intent of the requirements for the need to develop emergency plans to define parameters. The ideal legal terminology would be to include "reasonable probability" in the wording of the regulation to specify the development of an emergency plan which requires alarms and evacuation plans. (ex. 15-4)

The basis for their contentions is that in small operations, such as those conducted by the Brunswick Company, the use of a full-scale emergency plan does not seem warranted. Further they urge OSHA to establish some action levels or criteria for developing and implementing an emergency plan.

United Technologies (ex. 11-17) further states that the Courts have held that OSHA cannot require employers to abate the mere possibility of hazard but that there must be a reasonable probability of harm. Further they state that almost any situation can present the possibility of an emergency but it is difficult to imagine an emergency

involving pre-pregs that is likely to present a significant risk to employees. Therefore, they argue, to be consistent with the Court's interpretation, the word "possibility" in this paragraph should be changed to "reasonable probability."

In addition, Chemical Manufacturer's Association (CMA) commented that an emergency plan should be required where there is a reasonable possibility of an emergency. (ex. 11-13).

OSHA reviewed these written comments and finds that supportive evidence was not furnished which suggests that changing the term possibility to probability would facilitate compliance without compromising the benefits afforded the worker through these emergency planning provisions. Additionally, no hearing participant provided information supportive of United Technologies contentions. Finally, since United Technologies did not appear as a hearing participant, OSHA was unable to discover through cross-examination what, if any, probative evidence exists to support such a change.

OSHA, however, has the written recommendations of the Mediated Rulemaking Committee and the supportive rationale for the provisions contained in the NPRM. George Robinson, representing the IAM, testified during the Mediated Rulemaking Committee deliberations on the appropriateness of using the term "possibility" to trigger the emergency situations provisions. He provided the Committee with his experiences regarding workers who died as a result of the lack of emergency planning (ex. 9). He felt that the broadest term, e.g. possibility, must be used when describing an emergency situation. His testimony convinced the entire Mediated Rulemaking Committee and subsequently OSHA when the NPRM was developed. OSHA agrees with the Committee's findings and, for the reasons stated in those recommendations, has adopted the term "possibility" as part of the emergency planning requirements.

Other commenters expressed concerns with what they believed to be a requirement to have two sets of duplicate written plans. Specifically, McDonnell Aircraft Company (ex. 11-6) provided a written submission which stated that the requirements for two written plans, § 1910.1050 (d) and (g)(2) are not necessary. They were referring to the requirement to have (1) a written emergency plan and (2) the requirement to develop a written plan for compliance with the PEL. The two requirements do not overlap. As previously mentioned, OSHA relied on the recommendations of

the Mediated Rulemaking Committee in adopting the provisions contained in the NPRM. The rationale in support of a written emergency plan can be found in exhibit 9, the Committee's recommendations. No evidence was provided by McDonnell Aircraft to support its assertions. Furthermore, in their written submission, they acknowledge that hazardous chemicals are present in most large manufacturing facilities and in abundant supply and diversity. Given the abundant supply and diversity expressed by the commenter, it hardly seems inappropriate to have a written plan which identifies the chemical and the emergency procedures. Furthermore, OSHA notes that the emergency provisions contained in the final standard are consistent with what OSHA has required in other standards. In light of the above, OSHA promulgates the emergency requirements as proposed.

Paragraph (e). Exposure Monitoring

Section 6(b)(7) of the Act (29 U.S.C. 655) mandates that any standard promulgated under section 6(b) shall, where appropriate, provide for monitoring or measuring employee exposure at such locations and intervals and in such manner as may be necessary for the protection of employees.

OSHA believes that it is appropriate for employers to measure employee exposure to MDA for the following reasons. First, exposure monitoring informs the employer whether the employer's legal obligation to keep employee exposure below the permissible exposure levels is being met. Second, exposure monitoring evaluates the effectiveness of engineering and work practice controls and informs the employer whether additional controls need to be instituted. Third, exposure monitoring is necessary to determine whether respiratory protection is required at all and, if so, which respirator is to be selected. Fourth, section 8(c)(3) of the Act (29 U.S.C. 657) requires employers to notify promptly any employee who has been or is being exposed to toxic materials or harmful physical agents at levels which exceed those prescribed by an applicable occupational safety or health standard, and to inform such employee of the corrective action being taken. Finally, the results of exposure monitoring constitute a vital part of the information which must be supplied to the physician and may contribute information on the causes and prevention of occupational illness.

The final standard requires that the employer determine the exposure for each employee exposed to MDA. It is not necessary to provide separate measurements for each employee. If a number of employees perform essentially the same job under the same conditions, it may be sufficient to monitor only some of such employees to obtain data that are representative of the remaining employees. Representative personal sampling for employees engaged in similar work and exposed to similar MDA levels can be achieved by measuring that member of the exposed group reasonably expected to have the highest exposure. This result would then be attributed to the remaining employees of the group.

In many specific work situations, the representative monitoring approach can be more cost-effective in identifying the exposures of affected employees.

Because of the nature of the MDA exposure hazard, it is necessary that the scope of the final standard be as broad as possible to protect potentially exposed employees. However, many employers will be required only to perform initial monitoring to determine employee exposures. If the results of initial monitoring demonstrate that an employee's exposure to MDA is below the action level, the employer is allowed to discontinue monitoring and other activities under this provision of the standard for that employee. OSHA established this provision to reduce the burden on employers, while providing them with an objective means of determining whether they must take additional steps for compliance with the standard.

The final standard also contains provisions for periodic monitoring. The more frequent the measurement, the higher the accuracy of the employee exposure profile. Selecting an appropriate interval between monitoring efforts is a matter of judgment. Where exposure measurements are determined to be above the permissible exposure limits, the employer is required to monitor every 3 months. Where exposure measurements are above the action level but at or below the PELs, monitoring is required only at 6 month intervals. Additional monitoring is also required for a particular job position if any changes in production, processes, control measures, or personnel result in new or additional exposure to MDA. The redetermination of employee exposure is necessary to assure that the most recent results accurately represent existing exposure conditions. This is necessary so the employer may take appropriate action such as instituting

additional engineering controls or providing appropriate respiratory protection.

The final standard also contains provisions for visual monitoring of exposed skin areas. The employer would be required to make routine inspections of the face, hands, and forearms of employees potentially exposed to MDA. If the inspection reveals yellow staining or other abnormalities associated with dermal exposure to MDA or if the employee attests to such abnormalities elsewhere on the employee's body, the employer shall send the employee to a medical professional for evaluation. If the employer determines that the employee has been exposed to MDA the employer shall:

- (a) Determine the source of exposure;
- (b) Implement protective measures to correct the hazard; and
- (c) Maintain records of the corrective actions in accordance with paragraph (n) of this section.

Many of the commenters presented testimony regarding the difficulty anticipated from implementing the visual monitoring requirements. The testimony was in three general areas: establishing responsibilities for the employer which are non-performable, invasion of privacy associated with the employer conducting visual monitoring of workers' skin and the specificity of the yellow staining.

Regarding the first issue, non-performable responsibilities, Westinghouse Electric Corporation (ex. 11-11) argued that the requirement in the proposed rule to make routine inspections of employee dermal areas potentially exposed would be difficult to do. They contend that this requirement would make the first line supervisor a diagnostician. Furthermore, they contend that if the first line supervisors are not medically experienced, they can not be adequately trained to examine the skin surfaces sufficiently to detect exposure from MDA or any other dermal conditions. General Dynamics (ex. 11-3), although not concerned with the non-performability aspects of this provision, argued that some guidelines on what constitutes an employee skin inspection (presumably signs of yellow or red-itchy cracked skin) are necessary.

OSHA believes that the first line supervisor can conduct visual monitoring. OSHA is guided in making this decision by the recommendations made by the Mediated Rulemaking Committee. In the rationale provided by the Committee, it is clear that the first line supervisor is responsible only for examining the skin and looking for abnormal conditions such as yellow

staining, red-cracked skin, browning of the finger tips, or whatever can be noticed by a simple visual inspection (ex. 9). It should be noted that the purpose of this requirement is to determine whether or not personal protective equipment should be worn by the worker and, if so, is effective. The first line supervisor needs only to detect a change and then the worker must be referred to a physician for follow-up and determination. The Committee's rationale was that visual monitoring should be the first line of defense used when exposure to a skin absorbable substance is apparent. OSHA agrees with the Committee's rationale and has not been provided with any conflicting evidence. Thus, the requirement for the employer to conduct visual monitoring remains in the final standard.

Regarding the second issue, invasion of privacy, McDonnell Douglas (ex. 11-6) stated that the visual monitoring requirements must delicately avoid invasion of privacy. They state:

It must clearly state that the employer may inspect face, hands, and forearms, and send the employee to a medical professional if other areas of contamination are suspected or attested to by the employee.

OSHA agrees that the privacy aspects of conducting dermal monitoring must be strictly adhered to. OSHA believes that if an employer follows the recommendations given by McDonnell Douglas as stated above that workers' privacy will not be invaded. For example, the hands, face, forearms or in general the exposed areas of the body can be viewed without removing any clothing. The employer can examine the hands to determine if MDA exposure has occurred. The employee is capable of identifying staining on other parts of the body and should be referred to a physician for follow-up. During the Committee's deliberations, one of the employer groups presented data which indicated that yellow staining of lower body parts had been noted in his work force. The question of conducting visual monitoring in this instance was discussed at length for this particular situation. The Committee agreed and OSHA agrees with the Committee's conclusions that the best thing to do in this situation was to refer the worker to the appropriate medical personnel for follow-up.

Once the determination has been made that skin contact has occurred the appropriate corrective actions must be taken. Thus, the visual monitoring requirements contain the obligations of the employer for conducting this type of monitoring.

Many of the commenters stated that pure MDA does not produce yellow staining but that the staining results from handling of specific MDA mixtures. The Department of Energy (ex. 11-8) contended that:

Visual monitoring of exposed body areas needs further consideration. Often meta-phenylene diamine (MPDA) is present in MDA liquid mixtures. While MDA alone does not stain skin or clothing significantly, MPDA stains both skin and clothing much more intensely. Thus with MDA-MPDA mixtures there could be considerable visible staining of skin and clothing resulting in unwarranted alarm if MDA is the major concern.

OSHA agrees that these concerns of the hearing participants are well founded. However, OSHA did not propose the provisions to conduct visual monitoring of workers' skin based solely on the belief that yellow staining could be used as a positive indicator of exposure. Instead, it was OSHA's view and that of the Committee that if a worker was wearing personal protective clothing, e.g. gloves, that dermal contact to whatever chemical was being handled should not occur. Therefore, if such exposure did not occur, then any noticeable changes in the skin, be it yellow stain, redness, cracked hands, etc. should not occur. OSHA believes, however, that yellow staining can be used as one of the indicators of exposure. This view is based on OSHA's analysis of a control study which reported that MDA produced yellow staining (ex. 9). Later, during the MDA hearings, an additional study, conducted by the same examiner, was presented which indicated that it was not pure MDA but instead a mixture which caused yellow staining. While OSHA now agrees that yellow staining may result from exposure to a MDA mixture, OSHA also recognizes that MDA skin exposure can occur without skin staining. What remains apparent is that if there are noticeable changes to the skin and the worker is wearing personal protective equipment, these changes may be the result of the failure of the personal protective clothing to prevent exposure. The fact that visual monitoring helps to make this determination is the reason that this provision was recommended by the Committee, included in the NPRM, and is now part of the final standard.

Paragraph (f) Regulated Areas

The final standard requires that the employer establish regulated areas where MDA concentrations exceed or can be reasonably expected to exceed the permissible exposure limits or where employees are engaged in the handling,

application, or use of MDA that can result in "dermal exposure to MDA." The regulatory text in the final standard was modified to conform to the definition of regulated area (See 52 FR 26857).

The final standard requires that regulated areas are to be demarcated, in any manner that minimizes the number of employees exposed to MDA within these areas. To increase the performance-orientation of the standard and minimize recordkeeping, no detailed requirements were specified regarding the demarcating of an area. Unauthorized employees are restricted from entering the regulated areas. Employees working in regulated areas are required to wear the appropriate type of personal protective equipment and are prohibited from activities such as smoking and eating. Other purposes of this section are to designate those areas where precautionary signs are to be posted and to designate areas where employees may be subject to three-month monitoring when their exposure is above the PEL.

Regulated areas are required where airborne exposures exceed or can reasonably be expected to exceed the PEL and where dermal exposure to MDA can occur. Establishing regulated areas at all worksites where the potential exists for exposure above the permissible exposure limits is a regulatory approach that has been adopted by OSHA in many occupational health standards. This approach covers areas within worksites where there are frequent leaks, or where exposures may be of high concentration but of short duration, e.g., maintenance operations. Where only dermal exposure to MDA can occur, a regulated area shall be established where employees are engaged in routine or non-routine processes requiring the handling, application, or use of MDA. OSHA recognizes that where the potential for dermal contact and inadvertent exposure to non-airborne forms of MDA is great, a mechanism to prevent incidental exposure of employees not actively engaged in the process is very much needed. The purpose of a regulated area is to ensure that employers make employees aware of the presence of MDA and attempt to restrict access. By limiting access, the number of employees inadvertently splashed and subsequently exposed to MDA can be minimized.

The establishment of regulated areas is an effective means of limiting the risk of exposure to as few employees as possible. This is consistent with good industrial hygiene practice when

exposure to a toxic substance can cause serious health effects. Access to the regulated areas is restricted to "authorized persons"; that is, those persons required by their job duties to be present in the area. More specifically, access is restricted to those authorized entry by the employer, this final standard, or the OSH Act. By limiting access to these areas to authorized persons only, the additional obligation imposed by the final standard when PPE is used will be limited to as few persons as possible, thus reducing the economic implications of compliance with this standard.

The reasons that regulated areas are to be established in all work areas where the PEL is exceeded, including maintenance operations, is that the existence of a hazard, rather than the type of operation or work being performed, should be the basis for establishment of a regulated area. Areas where exposures are temporarily over the PELs while maintenance is being performed need to be demarcated to warn employees not performing the repairs, and access needs to be temporarily restricted. Further, employees who enter the area are thereby warned to wear the appropriate protective equipment when entering.

There were several other concerns expressed during the hearings regarding how to regulate and deregulate an area. The performance language which is used in the requirement to establish a regulated area allows the employer to establish a regulated area based on the handling, application, or use of non-airborne MDA and to deregulate this area when these activities stop.

Some of the commenters expressed concern with triggering the establishment of regulated area based on the handling, application, or use of non-airborne MDA. More specifically, they argue that the requirement as written would force even the use of small quantities of MDA to be done in regulated areas. The Department of the Air Force (ex.11-19) states that:

... consideration must be given to operational uses of small quantities of MDA containing materials versus large scale manufacturing processes. This specifically applies to regulated areas for repair processes. We anticipate the use of small MDA-containing patches for repairing aircraft structures. By the definition of regulated area, a certain area of the hangar or repair dock would become a regulated area during the application of a small (2-6 square inch) pre-preg patch. Recommend (sic) a use quantity be established below which either a regulated area is not required or less stringent regulated area requirements are specified.

During the hearings, OSHA questioned the representatives from the Air Force extensively concerning the requirement to establish a regulated area. OSHA clearly stated during the presentation made by the Air Force that it was not the Agency's intent to require that an entire facility become a regulated area just to patch on a 2 inch square on one airplane's wing. The regulated area should be confined to prevent access by unauthorized workers and should establish limits for workers engaged in work activities within these areas. In this instance, this could easily be accomplished without making the entire plant a regulated area.

In fact, OSHA questioned Col. Bishop from the Air Force on precisely this example. After Col. Bishop had agreed that establishing a regulated area in the situation described above was feasible and not difficult, the OSHA attorney summarized Col. Bishop's actual concerns as follows:

I mean you're not suggesting that a compliance officer would come in after reading this language just like you've just read it and assume because your two workers are putting this patch on an airplane wing—there's one on the wing and there's one down handling materials—that that entire hangar will be considered a regulated area because of the dermal exposure situation . . . (tr. II, 48)

Colonel Bishop responded: "We have our fears." (tr. II, 48).

OSHA believes that the concerns expressed by Col. Bishop and other hearing participants regarding the difficulties in establishing regulated areas when small amounts of MDA are being used or small repair projects are being done are unfounded. The rationale provided in this preamble for establishing regulated areas will serve as guidance in determining if compliance with these provisions have been achieved. Clearly, in instances when small operations are taking place, it is not the agency's intent to require entire facilities to become regulated areas.

Paragraph (g). Methods of Compliance

The standard requires that feasible engineering and work practice controls be used to reduce employee exposures to or below the permissible limits. In situations where engineering controls that can be instituted will not reduce exposures to the permissible exposure limits, these controls must nonetheless be used to reduce exposures to the lowest feasible level and be supplemented by the use of respirators. In addition, a compliance program to reduce exposures to within the

permissible exposure limits solely by means of engineering and work practice controls must be developed and implemented. Written plans for this program must be developed and furnished upon request for examination and copying to representatives of the Assistant Secretary, representatives of the Director, and affected employees. These plans must be reviewed and updated annually to reflect the current status of the program.

OSHA believes that there are certain activities, often involving certain maintenance and repair operations, as well as in emergency situations, in which the use of engineering controls to control exposures will not be feasible, regardless of the permissible exposure limits in the standard. Where the employer can show that engineering controls for such operations are not feasible, respirators shall be permitted as a means of control.

It has been OSHA policy to require that employers use feasible engineering and work practice controls to prevent excessive employee exposures and that respirators be used as an alternative only when other methods are not adequate, are not feasible, or have not yet been installed. The compliance hierarchy proposed by OSHA was not challenged and as such appears as proposed in the final standard. Nonetheless, it should be noted that OSHA is conducting a separate generic rulemaking on methods of compliance (OSHA Docket No. H-160; 54 FR 23991 (June 5, 1989)). The outcome of that rulemaking may have some future effect on this paragraph.

Paragraph (h). Respiratory Protection

OSHA requires that where respirators are necessary to limit employee exposures to below the permissible exposure limits, the employer must provide the respirators at no cost to the employee, and require that the employees use them.

A table of respirators for use with MDA is included in the standard provisions. The table is similar to those used in other standards and reflects current OSHA policy and is generally used in standard development.

Respirator use is required during the time necessary to install or implement feasible engineering and work practice controls. Further, respirators must be used in: (1) Operations in which engineering and work practice controls are not feasible (e.g., certain maintenance operations); (2) work operations for which the feasible engineering and work practice controls are not sufficient to reduce exposures to

or below the PEL; and (3) emergency situations.

The final standard also requires that each employee be properly trained to wear a respirator, to know why the respirator is needed, and to understand the limitations of the respirator. An understanding of the hazard involved is necessary to enable the employee to take steps for his or her own protection. The respiratory protection program implemented by the employer must conform to that set forth in 29 CFR 1910.134. This provision contains basic requirements for proper selection, fit, use, cleaning, and maintenance of respirators.

The final standard also contains provisions for emergency respirator use. OSHA believes that emergencies are situations where respirators must be used to protect employees. Since it is unrealistic to predict the expected contaminant concentrations to which an employee may be exposed in all emergencies, OSHA requires the use of respirators of the type approved for protection against unknown concentrations. If an employee is working in an area and using an approved respirator of the type appropriate for the existing concentration, and an emergency occurs, the employee of course should continue using the respirator during his escape. Provisions to provide proper protection for emergency personnel assigned to enter vessels or workplaces containing an unknown concentration to rescue workers or to control the release of the contaminant or perform any necessary repairs will be required to be a part of the emergency plan. This paragraph requires that respirators be made available to employees in these operations.

The final standard also requires the use of qualitative or quantitative fit tests. When negative pressure respirators are used, proper fit is especially critical to prevent leakage of contaminated air into the facepiece.

The employer must ensure that the employees' respirators fit properly and that leakage is minimal. A rapid qualitative fit test can be performed as either a positive-pressure test, in which the exhalation valve is closed and the wearer exhales into the facepiece to produce a positive pressure, or a negative pressure test, in which the inhalation valve is closed and the wearer inhales so that the facepiece collapses slightly. Employees could be trained to perform this test.

The final standard also requires that the employer use the fit testing appendix (appendix E) to ensure that the employer

conducts the proper testing to achieve adequacy of fit testing.

Paragraph (i). Protective Work Clothing and Equipment

The employer is required to provide and the employee to wear the appropriate protective clothing to prevent eye and dermal exposure to MDA. The requirements for the use of personal protective clothing and equipment are consistent with those found in §§ 1910.132 and 1910.133. The equipment is to be provided at no cost to the employee, and includes the use of those items that may be necessary to protect employees at each particular work situation from exposure to MDA, including, where appropriate, such items as face shields, gloves, aprons, coveralls, or footwear.

Contact with liquid MDA irritates the eyes and may result in corneal burns if the MDA is splashed in the eyes. When there is a reasonable possibility of splashing the eyes, precautions are needed. Eye and face protection is currently required by 29 CFR 1910.133, and the types of safety goggles and face shields required by this section to prevent eye and face injury are readily available from safety products companies nationwide.

OSHA's standard is performance-oriented and requires the employer to survey the work situation in determining the type of protective equipment needed. For example, when handling solid materials the employee may be required to wear full body coveralls and gloves, which must be removed at the end of the shift and laundered before being worn again. This employee would also be required to shower at the end of the work shift. Employees required to work only with non-airborne forms of MDA which can result in "dermal exposure to MDA," may not be required to wear full body coveralls but instead may be required to wear an apron, and gloves. If the employee does become splashed with MDA or other substances containing MDA, the employee must be directed to immediately remove the clothing, wash the affected area, and put on clean clothing if necessary. The employer may require employees to discard gloves when removed and use a new pair of gloves after breaks, lunch, etc. The employee's gloves must be sufficiently protective or changed often enough so that MDA-wetted material is not kept in contact with the skin.

The performance approach grants an employer flexibility to achieve the goal of minimizing MDA contact with the skin in a manner the employer finds most effective. However, being

performance oriented, it is of necessity more general and requires the employer to consider the work process in order to achieve the desired goal in the manner that the employer believes is most efficient. This provision is designed to prevent the employee from coming in contact with MDA or MDA contaminated substances that may result in "dermal exposure to MDA."

The employer must be aware that maintaining the effectiveness of the protective equipment and clothing used is also of great importance. Exposure occurs by (1) bulk penetration through pinholes, rips, zippers, seams, etc.; (2) material failure through chemical degradation; or (3) permeation through the material.

While not specifically required, OSHA believes that the employer can use permeation data to determine the effectiveness of protective clothing. Permeation depends on MDA concentration, type of protective material, thickness of protective material, temperature, and age of protective clothing. Liquid MDA that may be spilled on aprons, coveralls, or footwear or protective clothing other than gloves can be wiped off within a few minutes time. Therefore, the materials used to make these types of protective clothes need to be impervious to MDA only for a few minutes. However, the liquid MDA permeability rate for materials used to make gloves needs to be less than that for other protective equipment since it is less likely that gloves will be wiped off when liquid contact occurs. Breakthrough times of MDA through various protective clothing materials differ widely, and the choice of material for protection against MDA breakthrough depends on the type of operation involved and length of time of contact, other solvents present, and other factors. Because of the uncertainty associated with requiring this sort of testing, OSHA chose to adopt regulations which give the employer the option of choosing the methodology relied upon to assure that the effectiveness of protective clothing is achieved. Nonetheless, although there have been limited tests of protective clothing and devices conducted for various toxic materials, OSHA recognizes that all clothing and equipment are not equally protective; and in some cases may actually provide no effective protection. Data analysis indicated that polyvinyl chloride (PVC), natural latex, and polyethylene are currently the best candidates for protection against solutions containing MDA.

Under this provision, employers are obligated to take the appropriate measures to ensure that workers are not dermally exposed to MDA, and to choose the protective clothing or equipment which will achieve this goal. How much clothing and the type of protective clothing needed will depend on the potential for exposure and the conditions of use. The employer in exercising his reasonable judgment in the workplace should be able to select the appropriate clothing or equipment in accordance with the criteria of this paragraph which satisfies the legal obligation defined by this paragraph.

The employer can also use any appropriate method available to determine that the personal protective equipment is functioning properly. For example, the employer may rely on staining of the skin, MDA in the urine, or may conduct dermal monitoring under the protective clothing to determine potential for absorption and consequently the ineffectiveness of personal protective equipment. In addition, the medical surveillance provisions required by OSHA would detect workers who were adversely affected as a result of occupational exposure to MDA.

OSHA also allows the worker to remove some protective clothing outside of the change room. The regulatory text regarding removal of MDA-contaminated protective work clothing and equipment has been slightly modified, both to clarify the provision and to better reflect the Committee's intent (52 FR 26862). These changes also respond to comments that led to Issue #15 in the Notice of Hearing (55 FR 2104). Workers can remove some items like gloves and aprons and discard disposable contaminated protective clothing before leaving a regulated area. Of course, the employer who allows the employee to dispose of contaminated clothing in areas outside of the change rooms is still obligated to comply with the requirements for the proper disposal of MDA contaminated materials. In addition, OSHA requires that clothing not routinely removed throughout the day must be removed at the end of the shift in change rooms.

Paragraph (j). Hygiene Facilities and Practices

The final standard contains a variety of provisions for the use of shower and change room facilities and lunch rooms for employees exposed to MDA.

For example, whenever food or beverages are consumed at the worksite and employees are exposed to MDA at or above the PEL or are subject to "dermal exposure to MDA" the

employer shall provide readily accessible lunch areas. Lunch facilities located in areas where MDA exposures are at or above the PEL must be equipped with a positive pressure filtered air supply. In addition, lunch facilities may not be located in areas where "dermal exposure to MDA" can occur.

Showers are required to be provided for workers exposed to dusts or vapors in concentrations in excess of the action level. Workers subjected only to "dermal exposure to MDA" must be instructed to immediately wash exposed areas with soap and water or any media which does not increase the absorption properties of MDA. This particular requirement was given much consideration by OSHA.

OSHA is concerned with the appropriate manner in which MDA should be removed from the skin. However, OSHA did not want to require that only soap and water be used to remove MDA impregnated resin or accumulations on the skin because something better might be developed in the future. In fact, OSHA believes that it is better, should exposure occur, to remove the hardened resin or other MDA material as soon as possible even if a solvent must be used. OSHA believes that if the employer can demonstrate that a particular solvent does not increase the absorption properties of MDA it should be used to remove MDA from the skin. The final standard also requires that the employer ensure that all employees who have been exposed to MDA at or above the PEL wash their hands and face with soap and water prior to eating, drinking, smoking or applying cosmetics, and taking breaks. This requirement is intended to prevent the accidental ingestion of MDA.

Paragraph (k). Communication of Hazards to Employees

Signs and Labels

The final standard requires that the employer post and maintain legible signs demarcating regulated areas and entrances or access ways to regulated areas with the following legend:

DANGER: MDA MAY CAUSE CANCER,
LIVER TOXIN; AUTHORIZED
PERSONNEL ONLY: RESPIRATORS AND
PROTECTIVE CLOTHING MAY BE
REQUIRED TO BE WORN IN THIS AREA

These signs are intended to supplement the training which employees are required to receive under the standard. Even trained employees will need to be reminded of the locations of regulated areas and the

dangers of entering these areas. In addition, other personnel, such as employees of independent maintenance contractors authorized to enter regulated areas, need to be informed of the locations of regulated areas, the dangers of entering these areas, and the need to use protective equipment. OSHA has determined that both signs and training are necessary to apprise employees adequately of the hazards associated with MDA exposure.

OSHA also requires specific wording of the warning signs for regulated areas to assure that the proper warning is given to employees. The word "danger" is used to attract the attention of workers, alert them to the fact that they are in a hazardous area and to emphasize the importance of the message that follows. In addition, the use of the word "danger" is consistent with recent OSHA health standards dealing with carcinogens. The sign legend: "Respirators and Protective Clothing May Be Required to Be Worn In This Area," recognizes that there may be a difference between the MDA concentrations in air or the potential to be splashed with liquid mixtures, (the bases which determine when a regulated area must be established), and a particular employee's likely exposure.

The standard also requires labelling of containers of MDA. The labels must state, for (a) MDA:

DANGER: CONTAINS MDA MAY CAUSE
CANCER, LIVER TOXIN
and for (b) Mixtures containing MDA:

DANGER: CONTAINS MDA: CONTAINS
MATERIAL WHICH MAY CAUSE
CANCER, LIVER TOXIN

The final standard is consistent with section 6(b)(7) of the Act, which prescribes the use of labels or other appropriate forms of warning to apprise employees of the hazards to which they are exposed.

It is required that labels remain affixed to containers leaving the workplace. The purpose of this requirement is to assure that all affected employees, not only those of a particular employer, are apprised of the hazardous nature of MDA exposure.

It is OSHA's view that informing employees of the hazards to which they are exposed is an important element in reducing occupational disease and injury and one of the significant purposes of the Act. Section 6(b)(7) of the Act does not limit an employer's obligation to inform employees of hazardous conditions, to the employer's own employees. When an employer manufactures, formulates, or sells a product, the employer may create exposures not only to his or her own

employees, but also to the employees of other employers involved in handling, transporting, or using the product.

Material Safety Data Sheet (MSDS)

The final standard also requires statements to be incorporated into a material safety data sheet. Information to assist in the preparation of a MSDS can be found in appendices A and B.

Employee Information and Training

OSHA requires that all employers provide a training program for all employees exposed to MDA, initially at the time of assignments and at least annually thereafter. OSHA also requires an information and training program to inform employees of the hazards to which they are exposed and to provide employees with the necessary understanding of the degree to which each employee can contribute toward minimizing health hazard potentials.

The content of the training program is intended to inform employees of: (1) The hazards to which they are exposed; (2) the necessary steps to protect themselves, including those to be taken during emergency situations; (3) limitations and the proper use of respirators and protective equipment; (4) a description of medical examinations and their purpose; (5) implementation of work practices and the use of available engineering controls; and (6) the contents of this standard. Section 6(b)(7) of the Act makes it clear that these are appropriate goals for an employee training program, and the final standard includes such provisions.

OSHA requires the employer to make a copy of the standard and its appendices available to affected employees and their representatives. This requirement, in combination with the review provided for as part of the training program, is intended to ensure that employees understand their rights and duties under this standard.

The employer is also required to provide, upon request, all materials relating to the training program to affected employees, the Assistant Secretary and the Director. This is intended to provide an objective check of compliance with the requirements under this paragraph. The regulatory text reflecting these access provisions, found in the final standard in paragraph (k)(4), were inadvertently omitted in both the Committee document and the proposal. The preamble discussion in both documents, however, was complete. Also, the regulatory text was included in the construction standard. Since the construction text and the preamble discussions generated no comment and since these requirements

are entirely consistent with other OSHA single substance standards, the access provisions are included in the final standard.

OSHA recognizes that MDA may be only one of a number of substances to which an employee may be exposed simultaneously in the workplace. The education and training requirements in this standard contain those elements OSHA has determined to be basic. The format and content of the required training and information program are neither rigid nor extensive.

Paragraph (l). Housekeeping

The final standard requires that employers institute a program to detect leaks, spills and discharges of MDA which includes visual inspections. When leaks, spills, or discharges of MDA are detected, the final language requires the employer to repair promptly all leaks and clean up all spills. These work practices aid in minimizing the number of employees exposed, as well as the extent of any potential for MDA exposure.

Prevention and removal of accumulations of liquid MDA on all surfaces are critically important aspects of minimizing employee exposure. The liquid, if allowed to remain on the floor or work surfaces, will slowly evaporate and contribute to a possible airborne hazard; or it may become a dermal hazard through inadvertent skin contact. MDA's low vapor pressure which results in slow evaporation will contribute to and prolong the hazard. The requirement to clean up spills and drips refers to the prevention and removal of visible accumulations of liquid MDA on all surfaces.

In addition to the hazards of exposure to MDA in its liquid forms, hazards also result from exposure to the dusts of MDA. Thus, the final language contains provisions for maintaining surfaces as free as possible of accumulations of dusts and waste containing MDA. Surfaces contaminated with dusts may not be cleaned by the use of compressed air. The final standard requires HEPA-filtered vacuuming equipment for vacuuming. This equipment must be emptied in a manner which minimizes the reentry of MDA dusts into the workplace.

Paragraph (m). Medical Surveillance

The final standard requires that each employer institute a medical surveillance program for all employees exposed to MDA under the following circumstances:

(1) Employees exposed at or above the action level to dusts or vapors for 30 or more days per year;

(2) Employees who are subject to "dermal exposure to MDA" for 15 or more days per year;

(3) Employees who have been exposed in an emergency situation;

(4) Employees whom the employer, based on results from compliance with paragraph (e)(8), has reason to believe are being dermally exposed; and

(5) Employees who show signs or symptoms of MDA exposure.

The standard requires that the medical surveillance program provide each covered employee with an opportunity for a medical examination. Further, all examinations and procedures must be performed by or under the supervision of a licensed physician and be provided without cost to the employee. Clearly, a licensed physician is the appropriate person to supervise and evaluate medical examinations. However, certain parts of the required examination do not necessarily require the physician's expertise and may be conducted by another person under the supervision of the physician.

The standard also requires that examinations be given at a reasonable time and place. It is necessary that examinations be convenient and be provided without loss of pay to the employee to assure that they are taken.

The final standard allows the examining physician to prescribe the specific tests to be included in the medical surveillance program. While unable to make findings regarding the use of bladder cancer testing in the NPRM and therefore not requiring such tests in the regulatory text, OSHA asked for public comment concerning the appropriateness of such a requirement (54 FR 20704). No comments were received in response and OSHA is not including such a requirement in the final rule. Nonetheless some specific requirements are included, such as:

(i) comprehensive medical and work histories with special emphasis directed to an evaluation of other carcinogens to which the employee is exposed, and smoking and alcohol use;

(ii) comprehensive physical examination, with particular emphasis given to symptoms related to skin disease and liver dysfunction;

(iii) urinalysis;

(iv) screening for liver damage.

It is important to note that the employer is required to make any prescribed tests available more often than specified if recommended by the examining physician.

OSHA also requires that the employer provide examinations advised by the physician to any employee exposed to MDA under emergency conditions. Due to the effects of high short-term exposures, it appears prudent to monitor such affected employees in light of existing health data. However, trivial exposure, for example, to a single drop of an MDA-containing mixture would not trigger the emergency examination requirement, particularly if the employee were able to remove the MDA immediately after exposure.

The employer is also required to provide the physician with the following information: a copy of this standard and its appendices; a description of the affected employee's duties as they relate to the employee exposure level; and information from the employee's previous medical examinations which is not readily available to the examining physician. Making this information available to the physician will aid in the evaluation of the employee's health in relation to assigned duties and fitness to wear personal protective equipment.

The employer is required to obtain a written opinion from the examining physician that contains the results of the medical examination; the physician's opinion as to whether the employee has any detected medical conditions which would place the employee at increased risk of material health impairment from exposure to MDA; any recommended restrictions upon the employee's exposure to MDA or upon the use of protective clothing or equipment such as respirators; and a statement that the employee has been informed by the physician of the results of the medical examination and of any medical conditions which require further explanation or treatment. This written opinion must not reveal specific findings or diagnoses unrelated to occupational exposure to MDA, and a copy of the opinion must be provided to the affected employee.

The requirement that a physician's opinion be in written form will ensure that employers have had the benefit of this information. The requirement that an employee be provided with a copy of the physician's written opinion will ensure that the employee is informed of the results of the medical examination. The purpose in requiring that specific findings or diagnoses unrelated to occupational exposure to MDA not be included in the written opinion is to encourage employees to take the medical examination by removing the concern that the employer will obtain information about their physical condition that has no relation to present occupational exposures.

The standard also includes a multiple physician review mechanism in paragraph (m)(6). In recommending this provision, the Committee relied heavily on the experiences of its members regarding a similar provision under the OSHA lead standard. OSHA accepted this recommendation in the NRPM. Since the provision generated no comment or controversy, other than a limited request for clarification, the provision is substantively promulgated as proposed (52 FR 26865).

This provision is triggered where an employee disagrees with the opinion of a physician, selected by the employer, whose examination disclosed signs or symptoms of occupational exposure to MDA, when the opinion could affect the employee's job status.

In paragraph (m)(9), the standard also contains provisions for removing an employee from exposure in certain circumstances, following a medical examination. In recommending this provision, again the Committee relied heavily on the experiences of its members regarding a similar provision under the OSHA lead standard. OSHA accepted this recommendation in the NRPM. In addition, the regulatory text regarding removal of employees from exposure at or above the action level for MDA or where dermal exposure to MDA may occur has been slightly modified, both to clarify the provision and to better reflect the Committee's intent (52 FR 26865). Since the provision generated no comment or controversy the provision is substantively promulgated as proposed. OSHA believes that employees whose health has been adversely affected as a direct result of occupational exposure to MDA should be removed from exposure and should receive medical removal benefit protections.

Paragraph (n). Recordkeeping

The standard's requirements are consistent with Section 8(c)(3) of the Act which provides for the promulgation of regulations requiring employers to maintain accurate records of employee exposures to potentially toxic or harmful physical agents which are required to be monitored or measured.

The final standard allows that objective data be used for any exemptions from the standard. Records of objective data must be maintained to demonstrate that employees will not be exposed to airborne MDA concentrations and that no "dermal exposure to MDA" can occur.

The standard also requires that records be kept to identify the employee monitored and to reflect the employee's

exposure accurately. Specifically, records must include the following information: (a) The names and social security numbers of the employees sampled; (b) the number, duration, and results of each of the samples taken, including a description of the representative sampling procedure and equipment used to determine employee exposure where applicable; (c) a description of the operation involving exposure to MDA which is being monitored and the date on which monitoring is performed; (d) the type of respiratory protective devices, if any, worn by the employee; and (e) a description of the sampling and analytical methods used, and evidence of their accuracy.

The final standard also includes a provision for requiring the employer to keep an accurate medical record for each employee subject to medical surveillance. Section 8(c) of the Act authorizes the promulgation of regulations requiring any employer to keep such records regarding the employer's activities relating to the Act as are necessary or appropriate for the enforcement of the Act or for developing information regarding the causes and prevention of occupational illnesses. OSHA believes that medical records, like exposure monitoring records, are necessary and appropriate to both the enforcement of the standard and the development of information regarding the causes and prevention of illness.

The employer is also required to keep a record of any employee's medical removal and return to work status.

The standard requires that all records required to be kept shall be made available upon request to the Assistant Secretary and the Director of NIOSH for examination and copying. Access to these records is necessary for the agencies to monitor compliance with the standard. These records may also contain information needed by the agencies to carry out their other statutory responsibilities.

The standard would also provide for employees, former employees, and their designated representative to have access to mandated records upon request. Section 8(c)(3) of the Act explicitly provides "employees or their representatives" with an opportunity to observe exposure monitoring and to have access to the records of monitoring procedures and results; several other provisions of the Act contemplate that employees and their representatives are entitled to play an active role in the enforcement of the Act.

Access to exposure and medical records by employees, designated representatives, and OSHA shall be

established in accordance with 29 CFR 1910.20. By its terms, it applies to records required by specific standards, such as this MDA standard, as well as records which are voluntarily created by employers. In general, it provides for unrestricted employee and designated representative access to exposure records. Access to medical records is also provided to employees and, if the employee has given specific written consent, to the employee's designated representatives. The standard requires that unrestricted access to both kinds of records be allowed, but access to personally identifiable records is made subject to rules of agency practice and procedure concerning OSHA access to employee medical records, which have been published at 29 CFR 1913.10. An extensive discussion of the provisions and rationale for § 1920.20 may be found at 45 FR 35312; the discussion of § 1913.10 may be found at 45 FR 35384.

It is necessary to keep records for extended periods because of the long latency periods commonly observed for carcinogens. Cancer often cannot be detected until 20 or more years after onset of exposure. The extended retention period is therefore needed for two purposes. Diagnosis of disease in employees is assisted by having present and past exposure data as well as the results of the medical exams. Retaining records for extended periods also makes it possible at some future date to review the adequacy of the standard.

The time periods recommended for retention of exposure records and medical records are thirty years, and period of employment plus thirty years, respectively. These retention periods are consistent with those found in other OSHA health standards.

The standard would also require certain employers to notify the Director in writing at least 3 months prior to the disposal of the records. Section 1910.20(h) also contains requirements regarding the transfer of records.

Paragraph (o). Observation of Monitoring

The standard also includes a provision for observation of exposure monitoring. This provision is in accordance with section 8(c) of the OSH Act which requires that employers provide employees and their representatives with the opportunity to observe monitoring of employee exposures to toxic substances or harmful physical agents. Any observer must be provided with the personal protective clothing and equipment that is required to be worn by the employees who are working in the area. The employer is required to assure the use of

such clothing and equipment or respirators and is responsible for requiring that the observer complies with all other applicable safety and health procedures.

Paragraph (p) Effective Dates

The standard becomes effective September 9, 1992. The effective date established in the final standard remains the same as the date which appeared in the proposed rule.

Paragraph (q). Appendices

Five appendices have been included at the end of this final standard. Appendices A, B, C, and D have been included primarily for purposes of information. None of the statements contained in appendices A, B, C, and D should be construed as establishing a mandatory requirement not otherwise imposed by the standard, or as detracting from an obligation which the standard does impose. However, the protocols for respiratory fit testing in appendix E are mandatory.

Appendix A contains information on the description and exposure levels of MDA. Also provided in appendix A is information on the health hazards associated with exposure, descriptions of protective clothing and equipment, emergency and first aid procedures, medical requirements, provisions for the observation of monitoring, access to exposure and medical records, and precautions for the safe use, handling, and storage of MDA.

Appendix B contains "substance technical guidelines" for MDA, including physical and chemical data, spill and leak procedures, including waste disposal methods, and other miscellaneous precautions for the safe handling of MDA.

Appendix C contains the medical surveillance guidelines for MDA. Included in these guidelines are the description of the routes of entry, the toxicology and symptoms and signs associated with MDA exposure, information on the treatment of acute toxic effects, and surveillance and preventive considerations, including hematology guidelines which may be useful to physicians in conducting the medical surveillance program required by paragraph (m) of this final standard.

Appendix D gives details of the sampling and analytical methods for use in monitoring employee exposures to MDA.

Appendix E gives detailed fit testing procedures that are to be followed for qualitative or quantitative fit testing of negative pressure respirators. Various protocols for qualitative and

quantitative fit tests are outlined in detail.

All the appendices are designed to aid the employer in complying with the requirements of the standard. Paragraph (k) of this final standard on the "communication of MDA hazards to employees" specifically requires that the contents of the standard and appendices A and B be made available to affected employees. Information contained in appendix C on medical surveillance is to be explained to affected employees. Appendix C also provides information needed by the physician to evaluate the results of the medical examination.

Paragraph (r) Start-Up Dates

The final standard contains start up dates for the various standard provisions. The dates originally proposed in the MDA rule have been modified to reflect a more logical schedule for compliance. These dates are based on economic and technological considerations discussed in the regulatory impact analysis.

X. Summary and Explanation of the Standard for the Construction Industry

Paragraph (a). Scope and Application

A separate standard for occupational exposure to MDA in the construction industry was developed. OSHA took this action based primarily on the recommendations of the MDA Mediated Rulemaking Committee which recommended that a separate standard be developed for the construction industry. OSHA also consulted, as required by section 107 (e) of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333 (e)) and 29 CFR 1912.3, with the Construction Advisory Committee concerning this rule for Construction. This meeting took place on November 3, 1987. This Committee advised that OSHA adopt the recommendations made by the MDA Mediated Rulemaking Advisory Committee for the construction industry and use such as the basis for its standard for construction. The Committee made this recommendation because they felt that the specialized use of MDA in the construction sector could best be addressed through the development of a separate construction standard. OSHA agreed with the recommendations of both committees and has developed a separate standard for the construction industry.

The final standard uses § 1910.12 (b) to define "construction work" as work for construction, alteration, and/or repair, including painting and decorating. Accordingly, the final standard applies to all occupational

exposures to MDA in the construction industry. Depending on the nature and extent of exposure, certain provisions of the standard rule may not be applicable in certain situations or may have limited applicability. The applicability of many provisions of the standard is based on the results of initial employee monitoring conducted by the employer or on the availability of other objective data concerning employee exposures or product characteristics. The construction operations listed in paragraph (a)(1) include construction, alteration, repair, maintenance, or renovation of structures, substrates, or portions thereof that contain MDA; the installation or finishing of surfaces with MDA containing products; the removal of MDA spills or emergency clean-up on site; and transportation, disposal, or storage of contaminated products.

MDA spill and emergency situations are included within the scope of the standard, because these events clearly have the potential for serious employee and bystander exposures. MDA spills might occur during the handling of bags or containers of MDA-containing materials to be used at the construction site. The final group of activities listed in the scope and application paragraph includes the transportation, disposal, storage, or containment of MDA or MDA-containing products on the worksites at which construction operations occur. These operations are included because they have considerable potential for excessive employee exposure to MDA, and, if not closely supervised and properly conducted, may lead to serious bystander exposure as well. The Environmental Protection Agency (EPA) has specific requirements for the disposal of hazardous waste, and the MDA standard contemplates compliance with EPA provisions for the safe disposal and handling of MDA-containing wastes and of MDA-contaminated clothing.

The final standard has been carefully structured to relate the stringency of the requirements to the extent and duration of employee exposures. OSHA therefore believes that a compliance burden will not be placed on construction employers who either do not use, handle, or apply MDA-containing products or who maintain MDA exposures in their workplaces at levels below the action level or where dermal exposure to MDA does not exist. In addition, the exemptions found in paragraphs (a)(2) through (a)(6) are identical to exemptions found in the general industry standard. Full discussions regarding the rationale for these exemptions can be found in the general

industry preamble and apply equally well here. Essentially, these exemptions apply to workplaces where MDA is present but in such a way as to not present a significant risk of harm to the employee.

Paragraph (b). Definitions

Paragraph (b) of the MDA standard for the construction industry defines a number of terms used in the standard. In some instances, the definitions used are consistent with those of other OSHA standards to be used in the general industry standard, e.g., "Director," "Assistant Secretary," and "Authorized person." However, certain other terms require definition because they are used in accordance with their meanings in the construction industry.

Action level is defined as one-half of the PEL. If employers are engaged in MDA work causing worksite levels of MDA above the action level for 30 or more days per year, they must also institute a medical surveillance program for all employees. In addition, on sites where food and beverages are consumed and the airborne MDA level exceeds the PEL, the standard requires employers to provide lunch areas that have airborne MDA levels below the action level.

Definition of MDA. The final construction standard includes a definition of MDA. Included in the definition are the salts of MDA. The rationale for including the salts in the definition of MDA was not challenged in the response to the NPRM. Thus the compounds covered by the proposed definition remains the same in the final standard.

The NPRM definition contained an exclusion for finished products which is now part of the scope and application section of this final rule.

Employee exposure is defined as that exposure to airborne MDA that would occur if the employee were not using respiratory protective equipment or personal protective clothing or equipment. OSHA believes it is essential to determine employee exposure levels without the use of respiratory protection in order to gauge the efficacy of mandated work practice and engineering controls.

Decontamination area is defined as an area outside of but as near as practical to the regulated area, consisting of an equipment storage area, wash area, and clean change area, which is used for the decontamination of workers, materials, and equipment contaminated with MDA. For more discussion see the hygiene facility section.

Dermal exposure to MDA occurs where employees are engaged in the handling, application or use of mixtures or materials containing MDA, with any of the following non-airborne forms of MDA: (i) Liquid, powdered, granular, or flaked mixtures containing MDA in concentrations greater than 0.1% by weight or volume; and (ii) materials other than "finished articles" containing MDA in concentrations greater than 0.1% by weight or volume. The final standard requires the employer to take certain protective actions where employees, engaged in the handling, application or use of mixtures or materials containing MDA, are subject to dermal exposure to MDA. In situations where employees handle, apply or use any MDA mixtures or materials as defined above, dermal exposure to MDA is considered to occur. The agency believes that correlating dermal exposure with handling, applying or using specific forms of MDA removes the confusion that has arisen from using such terms as "likelihood of dermal exposure." Simply put, dermal exposure to MDA is assumed to occur when employees handle, apply or use any MDA falling under the definition of "Dermal exposure to MDA."

Historical monitoring data is defined as monitoring data for construction jobs that are substantially similar. The data must be scientifically sound, the characteristics of the MDA containing material must be similar and the environmental conditions comparable. See the monitoring discussion below and the Committee discussion at 52 FR 26868.

Regulated areas are defined as areas where MDA concentrations exceed or can be reasonably expected to exceed the permissible exposure limits or where employees are engaged in the handling, application, or use of MDA that can result in "dermal exposure to MDA."

Paragraph (c) Permissible Exposure Limit

The final standard requires that the PEL for the construction industry be set at 10 parts of MDA per billion parts of air as an 8-hour time-weighted average (TWA) limit and at 100 ppb as a short term exposure limit (STEL). This is consistent with the final standard for general industry. The requirements contained in the final standard are supported by OSHA's findings that occupational exposure to MDA under current occupational conditions poses a significant risk to the health of employees and that the final standard can achieve a reduction in that risk.

As with the final standard for general industry, the standard for construction

establishes a ceiling or short-term exposure limit of 100 ppb (sampled over a 15-minute period) for MDA.

Biological monitoring was also recommended by many of the hearing participants for inclusion into the construction standard. OSHA's rationale for not including biological monitoring provisions in the construction standard are the same reasons stated in the general industry standard.

Paragraph (d) Communication Among Employers

Paragraph (d) of the rule requires that, on multi-employer construction worksites, employers performing MDA work requiring the establishment of a regulated area inform other employers on the site of the nature of their work with MDA and of the existence of and requirements pertaining to regulated areas. OSHA recognizes that several different operations involving workers from numerous trades may simultaneously take place on the same construction site and that the exposures of these workers to MDA should be minimized to the extent possible. OSHA believes that requiring employers who are directly involved in MDA-related activities to inform other employers working nearby on a multi-employer worksite of the existence of hazardous levels of MDA, regulated areas, and the rules pertaining to such areas will contribute substantially to the protection of these nearby employees.

Paragraph (e) Emergency Situations

OSHA believes that available health data suggest that elevated short-term exposure to MDA should be viewed with concern. An unexpected high exposure must be viewed as an emergency situation. A written plan is required for each construction operation where there is a possibility of an emergency. The plan shall include the applicable elements prescribed in 29 CFR 1910.38, "Employee emergency plans and fire prevention plans." OSHA believes that there is no substitute for proper planning for an emergency situation. In the construction industry where the work force and the job sites are constantly changing, the importance of proper emergency planning can not be overstated.

The standard provisions also include a requirement to alert employees other than those who have the potential to be directly exposed in an emergency situation. Such employees may be employees from neighboring work sites who may inadvertently approach the emergency site. They may also include employees of other employers or from

other work shifts or employees who may be later exposed to work surfaces or equipment contaminated as a result of the emergency.

OSHA believes that the performance language of the emergency situation paragraph will give employers the flexibility to choose any effective method of alerting employees, including communications systems, voice communication, or a bell or other alarm.

There was considerable testimony provided regarding the difficulty with implementing the proposed emergency requirements for the construction industry. The major difficulty was with the written plan which was proposed at 54 FR 20730 as follows:

(1) *Written plan.* (i) A written plan for emergency situations shall be developed for each workplace where there is a possibility of an emergency. Appropriate portions of the plan shall be implemented in the event of an emergency. (Emphasis added.)

The Dow Chemical Company (ex. 11-20) states that the requirement that a written emergency plan be developed for each construction worksite is infeasible for jobs of short duration. They recommend that OSHA establish a generic emergency plan approach. The Society of the Plastics Industry, Inc. (ex. 11-16) agrees that it is not feasible to have a specific emergency plan for every work site. Specifically, they state:

Such a requirement is not practical for all worksites of the construction industry. For example, a work crew may apply epoxy floor coverings containing MDA to three or four different worksites in a single day. To develop a written emergency plan for each of these sites could require more time than is necessary to carry out the work. (page 3).

SPI believes that construction employers who have MDA related jobs of short duration should be permitted to develop a written emergency plan that covers emergency situations, typical of a work operation, rather than a particular site. For example, instruction to don respirators in certain described situations, to locate the nearest exit upon arrival at each worksite, and to use that exit to depart from the work area in specified circumstances would provide practical and effective worker protection in an emergency, without imposing a burden far out of proportion to any benefit.

OSHA has reviewed the comments regarding the difficulties expected with implementing the emergency provisions in the construction industry. In addition, OSHA has reviewed both the preambular portion of the Committee's recommendations (52 FR 26868) and the substantive requirements of 29 CFR 1910.38. OSHA believes that the

Committee had intended to tailor this provision to better fit the nature of the changing worksites of the construction employee as it did in other areas of the standard. Examples of this are the use of historical monitoring data to satisfy the initial monitoring requirements for substantially similar construction operations, and the portable decontamination areas in the hygiene facilities paragraph. Looking also at the substantive elements found in the existing Employee emergency plan standard cited above, it appears that the only required element that would always be site specific is the emergency evacuation route. In light of these considerations, the language of paragraph (e)(1)(i) of the final construction standard reads as follows:

(i) A written plan for emergency situations shall be developed for each construction operation where there is a possibility of an emergency. The plan shall include procedures where the employer identifies emergency escape routes for his employees at each construction site before the construction operation begins. Appropriate portions of the plan shall be implemented in the event of an emergency. (Emphasis added.)

OSHA believes that this language will satisfy the concerns of the commenters and give effect to the Committee's intent without compromising the protection of the employee.

Paragraph (f). Exposure Monitoring

The standard also requires that the employers conduct monitoring to determine employee exposures to MDA. The standard requires initial determinations of employee exposures using frequencies and patterns of monitoring sufficient to represent with reasonable accuracy the exposures of employees. The standard would also require that monitoring be conducted no less frequently than once every 3 months if MDA exposure exceeds the PELs and once every 6 months if exposure is between the action level and the PELs. Section 6(b)(7) of the Act mandates that standards promulgated shall, where appropriate, "provide for monitoring or measuring employee exposures at such locations and intervals, and in such a manner as may be necessary for the protection of employees" (29 U.S.C. 655(b)(7)). Based on the recommendations made by CACOSH in its "Report on Occupational Health Standards for the Construction Industry," May 16, 1980, CACOSH Docket (pp. 35-37), and the provisions of the Act, OSHA requires that the construction industry do the same sort of monitoring that is required of the general industry sectors.

Accordingly, the standard for construction includes several monitoring requirements, i.e., employers must perform monitoring of their employees' breathing zones that will accurately reflect and be representative of their exposures to MDA. In paragraph (f)(2), construction employers are required to conduct initial monitoring of employee exposures, unless: (1) The employer can demonstrate, on the basis of objective data, that the MDA-containing product or material being handled cannot cause exposures above the standard's action level, even under worst-case release conditions; or (2) the employer has historical monitoring or other data demonstrating that exposures on a particular job will be below the action level. Periodic monitoring is addressed in paragraph (f)(3) and is consistent with the toxicity of MDA. In recognizing the unique circumstances of working in a regulated area on a construction site, OSHA allows employers who are conducting MDA operations within a regulated area to forego periodic monitoring if the employees are all wearing supplied-air respirators while working in the regulated area.

Monitoring may be terminated when, in accordance with paragraph (f)(4), employers obtain confirmation by means of periodic monitoring that their employees' exposures are below the action level. Paragraph (f)(5) requires the employer to conduct additional monitoring when there has been a change in production process, chemical present, control equipment, personnel, or work practices which may result in new or additional exposures to MDA, or when the employer has any reason to suspect a change which may result in new or additional exposures. Paragraph (f)(6) provides the accuracy and precision requirements for the sampling methodology selected by the employer. The requirements in paragraph (f)(7) pertain to employee notification of monitoring results.

Although employers are required to determine the exposure of each employee exposed to MDA, this determination is not required to be based on separate measurements taken for each employee. Instead, the standard permits employers to use a "representative" measurement to characterize the exposures of more than one employee when these employees perform essentially the same job under the same conditions. For these types of situations, it may be sufficient for the employer to monitor one or a few of these employees to obtain data that are "representative" of the exposure of the remaining employees in the group. As permitted in paragraph (f)(1)(iii),

representative personal sampling for employees engaged in similar work and exposed to similar concentrations of MDA can be achieved by measuring the exposure of that member of the exposed group who can reasonably be expected to have the highest exposure and then attributing this exposure level to the remaining employees in the group. In many work situations, this representative monitoring approach may be more cost-effective than individual monitoring of all employees to determine the exposures of affected employees. However, employers are free to use any monitoring approach that will correctly identify the breathing-zone exposures of their employees to airborne MDA.

Paragraph (f)(2) of the final rule contains requirements for initial monitoring for construction employees exposed to MDA. In this paragraph OSHA requires employers to conduct initial monitoring at the start of each new MDA job in order to assess the effectiveness of existing engineering controls and to provide information necessary for the proper selection of appropriate respirators.

OSHA believes that initial monitoring is essential for protecting employee health because it provides the employer with information for determining the necessity for using engineering controls, instituting or modifying work practices, and selecting appropriate respiratory protection. Recognizing the varied nature of construction projects, OSHA has required that initial monitoring for employee exposures be conducted at the start of each new construction project that involves the handling of MDA-containing materials.

Furthermore, however, Paragraph (f)(2) allows employers to dispense with initial monitoring if they can demonstrate by means of objective data that MDA-containing products or material cannot release airborne MDA in concentrations exceeding the action level. OSHA believes that employers may be able to obtain data from the manufacturers of MDA-containing products that demonstrate that these materials will not release MDA at levels that exceed the action level, even under worst case conditions. This exemption would relieve employers from monitoring when employees are handling MDA containing products that are not capable of releasing a significant amount of MDA.

OSHA also has included in paragraph (f)(2) an exemption from initial monitoring for employers who have historical monitoring data. OSHA included this exemption in recognition

of the fact that many employers are currently conducting exposure monitoring on construction sites; this exemption would prevent these employers from having to repeat monitoring activity for construction jobs that are substantially similar to previous jobs for which monitoring was conducted.

However, such monitoring data must have been obtained from projects conducted by the employer that meet the following conditions:

(1) The data upon which judgments are based are scientifically sound and collected using methods that are sufficiently accurate and precise.

(2) The processes and work practices in use when the historical monitoring data were obtained are essentially the same as those to be used during the job for which initial monitoring will not be performed.

(3) The characteristics of the MDA-containing material being handled when the historical monitoring data were obtained are the same as those on the job for which initial monitoring will not be performed.

(4) Environmental conditions prevailing when the historical monitoring data were obtained are the same as for the job for which initial monitoring will not be performed.

Paragraph (g). Regulated Areas

The standard requires that signs be posted to alert employees to the existence of areas where MDA concentrations exceed or can be reasonably expected to exceed the permissible exposure limits or where employees are engaged in the handling, application, or use of MDA that can result in "dermal exposure to MDA." Paragraphs (g)(2) and (g)(3) require that the regulated area be demarcated in a manner that restricts entry to the area to authorized persons only. Respirators must be supplied to persons entering regulated areas as specified in paragraph (g)(4) and eating, drinking, smoking, and applying cosmetics are prohibited in such areas by paragraph (g)(5). These requirements are consistent with similar provisions in previous OSHA standards (Acrylonitrile, 29 CFR 1910.1045; Inorganic Arsenic, 29 CFR 1910.1018; Ethylene Oxide, 29 CFR 1910.1047; and Vinyl Chloride, 29 CFR 1910.1017) and with the general industry standard regulating occupational exposure to MDA.

Paragraph (h). Methods of Compliance

The standard governing occupational exposure to MDA requires that a combination of engineering controls and work practices be used to meet the

exposure limits contained in the standard. The engineering control methods outlined in the standard include isolation, enclosure, exhaust ventilation, and dust collection. Work practices are also necessary for maintaining exposures at or below the PELs.

Local exhaust ventilation systems that are equipped with HEPA-filtered dust collection systems are required for use in the general industry standards and are likewise being required for use in the construction industry.

OSHA believes that in some instances but not as a general rule, that general exhaust ventilation systems may also be effective in reducing employee exposure to MDA in construction. Such systems are useful for reducing the concentration of MDA-containing materials and removing potentially harmful MDA particulates from the air through a HEPA filtration system. OSHA cautions employers, however, that the use of general exhaust ventilation will tend to spread MDA airborne contaminants unless the return air is passed through a HEPA filter. Vacuum cleaners that are equipped with HEPA filters are effective controls for cleaning MDA spills and performing clean-up, since the HEPA-filtered vacuum systems collect MDA-containing material and prevent it from becoming airborne.

Isolation and enclosure of operations where MDA-containing materials are being applied to surfaces during construction activities is an effective means of containing exposures. The burden would be on the Assistant Secretary, in a particular enforcement proceeding to demonstrate the feasibility of engineering controls required by paragraph (h)(1)(i)(D).

The prompt disposal of MDA-containing materials in leak-tight containers can be an effective work practice because MDA-containing materials sealed in disposal containers while they are still wet are less likely to pose a dermal exposure problem.

OSHA also notes the significance which respirator use has in controlling worker exposure to MDA resulting from spray application. In fact, OSHA believes that, in this instance, for the most part, a properly selected and functioning respirator serves as the only feasible control for ultimately separating the worker from his environment. OSHA recognizes that application of MDA through spray techniques would result in the potential for very high worker exposures and thus in these instances requires that respirators, in addition to the use of feasible engineering controls be used.

Further, OSHA requires that compressed air not be used to remove MDA-containing materials. Using compressed air to clean MDA dust from surfaces results in the formation of large dust clouds that lead to excessive exposures of the worker and bystanders unless local exhaust ventilation is used. There was no indication, however, that using compressed air to blow MDA-containing dust from surfaces was a current practice.

Paragraph (i). Respiratory Protection

The standard for the construction industry requires that employers provide respirators at no cost to employees:

(1) During the interval necessary to install or implement feasible engineering and work practice controls;

(2) In operations such as maintenance and repair activities and spray application processes for which engineering and work practice controls are not feasible;

(3) In work situations where feasible engineering and work practice controls are not yet sufficient to reduce exposure to or below the PELs; and

(4) In emergencies.

Employers are required under paragraph (i)(2) of the final rule to select appropriate respirators based on employee exposure levels that exist in the workplace. The required respirators range from half-mask air-purifying respirators equipped with high-efficiency filters for concentrations that do not exceed 10 times the PEL, to full-facepiece supplied-air respirators or SCBA when the concentration of MDA exceeds 1000 times the PEL. Employers are required to select respirators from those that are approved jointly by the National Institute for Occupational Safety and Health and the Mine Safety and Health Administration under the provisions of 30 CFR part 11.

Under paragraph (i)(3), employers are required to institute a respiratory protection program as required under 29 CFR 1910.134. The required program is to include among other things, (1) criteria for changing filter elements for air-purifying respirators, and (2) a policy permitting employees time to leave work areas to wash their faces and respirator facepieces to prevent skin irritation. Under paragraph (i)(5), the final standard requires that employers conduct qualitative or quantitative fit testing for all employees required to wear a negative-pressure respirator. The requirements for the use, selection, program elements, and fit testing of respirators are the same as those contained in the general industry standard.

Paragraph (j). Protective Work Clothing and Equipment

The construction standard, like the general industry standard, requires that all workers exposed to MDA be provided with personal protective clothing and equipment: i.e., coveralls, aprons, gloves, boot covers, and goggles. OSHA has imposed stringent provisions for the use of personal protective clothing because of the hazards associated with dermal absorption of MDA or MDA-containing materials. When non-disposable protective clothing is used, the employer is required by paragraph (j)(3) to launder the clothing in a manner that prevents the release of airborne MDA in excess of the PEL and to notify the person responsible for laundering. Paragraph (j)(2) requires employers to transport contaminated clothing in sealed impermeable bags or other impermeable containers. The requirements of paragraphs (j)(2) and (j)(3) are identical to the requirements of the general industry standard.

In addition, a requirement has been included that the personal protective equipment worn by employees be examined periodically to detect rips or tears, and that when rips or tears are detected in clothing they must be immediately mended, or the worksuit must be immediately replaced.

Also, OSHA allows disposable work suits to be used by construction workers handling MDA or MDA-containing products. OSHA believes that this type of clothing provides sufficient protection to the worker but eliminates the problems that may be involved in laundering and storing MDA-contaminated clothing on non-fixed work sites. OSHA recognizes that while disposable overalls may not be as durable and comfortable as cotton work clothes, they do not require laundering which would expose another workforce or the worker's family to MDA. OSHA, however, believes that non-disposable work clothes similar to those regulated in the general industry standard will provide sufficient protection for employees engaged in construction activities, provided that such clothing is properly cleaned after work and then laundered. OSHA, nonetheless, chooses to require performance language in its regulatory text which would allow the employer to choose the clothing which is appropriate.

OSHA also recognizes that heat stress is a concern when disposable protective clothing is used in hot environments. However, the use of protective clothing is necessary to protect employees from MDA exposure that may result from

contaminated clothing. In situations in which heat stress is a concern, OSHA believes that employers should use appropriate work-rest regimens and provide heat stress monitoring that includes measuring employees' heart rates, body temperatures, and weight loss. If such measures are used to control heat stress, disposable protective clothing can be safely worn to provide the needed protection against MDA exposure.

Paragraph (k). Hygiene Facilities and Practices

The hygiene facilities requirements of the construction standard are similar to those in the general industry standard. For example, shower facilities are required wherever the possibility of employee exposure to airborne levels of MDA in excess of the action level exists. All workers required to wear personal protective equipment must have a place to change their street clothes and to store them separately from their work clothes.

Paragraph (k)(1)(i) of the construction standard modifies the language of the general industry standard to allow "decontamination areas," in recognition of the fact that the place where employees change from street clothing to work clothing and back again to street clothing is not always a separate room but may be merely a separate area of a larger space. This difference recognizes that it may not be feasible at some construction sites to provide a separate room with physical barriers.

"Decontamination area" is defined in the final standard to mean an area outside of but as near as practical to the regulated area, consisting of an equipment storage area, wash area, and clean change area, which is used for the decontamination of workers, materials, and equipment contaminated with MDA.

OSHA also requires "separate storage facilities" in recognition of the fact the employers must use portable storage facilities that can be transported from job to job. OSHA's intent in this provision is to ensure that street clothes are sufficiently separated from work and protective clothing and equipment in order to prevent contamination of employees' street clothing, and this can be accomplished by separate lockers, baskets, or other containers.

OSHA also requires the provision of clean lunch areas: i.e., areas that have airborne concentrations of MDA below the action level, where employees may consume food or beverages on site. This addition was recommended by CACOSH in its 1980 report. CACOSH recognized that permanent lunch rooms, such as exist on fixed worksites, were

probably not feasible for the construction industry, due to the nonfixed nature of construction project worksites. See "Report on Occupational Health Standards for the Construction Industry," May 16, 1980, CACOSH Docket. The term "lunch area" is adopted by OSHA to indicate that a temporary facility, such as a separate trailer, would serve the purpose of protecting employee health.

Paragraph (l). Communication of MDA Hazards to Employees

In paragraph (l) of the standard, includes requirements to ensure that the dangers of MDA-containing materials are communicated to employees by means of signs, labels, and employee information and training. The requirements for the signs and labels mandated in this section parallel those in OSHA's Hazard Communication standard (29 CFR 1910.1200).

(1) *Signs and Labels.* The construction standard includes specifications for signs to be posted at all locations where regulated areas have been established to indicate that concentrations of airborne MDA exceed or can be reasonably expected to exceed the PEL or where employees are engaged in activities that can result in "dermal exposure to MDA"; such signs are to bear the same legend as that required in the general industry standard.

The purpose of such signs is to minimize the number of employees in a regulated area by alerting them to the fact that they must have authorization from their employer and take the appropriate protective measures before entering. Furthermore, as discussed in the summary and explanation section for the standard for general industry, signs serve to apprise employees of the hazards to which they are exposed in the course of their employment, and foster cooperation between the employee and employer in controlling workplace hazards. The standard also requires that all MDA products and containers of MDA products, including waste containers, be labeled with appropriate information and with a warning statement against inhalation or dermal contact with MDA. These labelling requirements are consistent with those found in 1910.1200.

(2) *Employee Information and Training.* The training requirements are consistent with those found in 1910.1200, except that annual training is required in both the general industry and construction standards. The standard requires that training be provided to all employees prior to or at the time of initial assignment and at least yearly

thereafter. Component areas to be covered in the training program include: (1) Methods for recognizing MDA; (2) the health effects associated with MDA exposure; (3) the importance of necessary protective measures to minimize exposure including, as applicable, engineering controls, work practices, respirators, housekeeping and protective clothing, and any necessary instruction in the use of these controls; (4) the purpose, proper use, fitting instructions, and limitations of respirators, as described in 29 CFR 1910.134; (5) the appropriate work practices for performing the MDA related job; and (6) the medical surveillance program requirements. The employer may design and implement his own training program that contains these elements, or rely on third-party training programs. Finally, the standard requires that the employer make readily available to affected employees and provide to OSHA and NIOSH all written materials regarding the employee information and training program.

OSHA strongly believes that informing and training employees can reduce the incidence of work-related diseases caused by exposure to hazardous workplace conditions.

Paragraph (m). Housekeeping

The standard for the construction industry includes a housekeeping provision stipulating that (1) when vacuuming is used for cleanup, only HEPA-filtered equipment may be used; and (2) all waste, scrap, debris, bags, containers, equipment, and contaminated clothing must be collected and disposed of in sealed impermeable bags or in other closed impermeable containers. OSHA believes that these housekeeping practices reflect advances in vacuum filter technology and good hygiene practices, and are essential parts of any effective MDA control program. OSHA believes that the use of HEPA-filtered vacuums and proper disposal practices will considerably diminish the risk of generating airborne MDA during cleanup—a potentially high-exposure activity—and minimize the potential for dermal absorption of MDA. The required use of high-efficiency particulate air filters on vacuums employed for cleanup is not intended to preclude the use of other complementary cleanup methods, such as wet methods (where applicable). OSHA believes that the housekeeping requirements will aid in minimizing worker contact with MDA.

Paragraph (n). Medical Surveillance

Section 6(b)(7) of the OSH Act requires that, where appropriate,

medical surveillance programs be included in OSHA health standards to aid in determining whether the health of workers is adversely affected by exposure to toxic substances. The medical surveillance requirements contained in this final MDA construction standard are designed to detect changes in liver function and signs or symptoms of acute liver disease.

OSHA requires that each employer must institute a medical surveillance program for all employees exposed to MDA as follows:

- (1) Employees exposed at or above the action level to dusts or vapors for 30 or more days per year;
- (2) Employees who are subject to dermal exposure to MDA for 15 or more days per year;
- (3) Employees who have been exposed in an emergency situation;
- (4) Employees whom the employer, based on results from compliance with (g)(8), has reason to believe are being dermally exposed; and
- (5) Employees who show signs or symptoms of exposure.

The final language requires that the medical surveillance program provide each covered employee with an opportunity for a medical examination. Further, all examinations and procedures must be performed by or under the supervision of a licensed physician and be provided without cost to the employee. Clearly, a licensed physician is the appropriate person to supervise and evaluate a medical examination. However, certain parts of the required examination do not necessarily require the physician's expertise and may be conducted by another person under the supervision of the physician.

OSHA also requires that exams be given at a reasonable time and place. It is necessary that exams be convenient and be provided without loss of pay to the employee to assure that they are taken.

The final standard allows the examining physician to prescribe the specific protocols to be included in the medical surveillance program. There are, however, some specific requirements, such as:

- (i) comprehensive medical and work histories with special emphasis directed to an evaluation of other carcinogens to which the employee is exposed, and smoking and alcohol use;
- (ii) comprehensive physical examination, with particular emphasis given to symptoms related to eye and skin irritation, and liver dysfunction;
- (iii) complete urinalysis; and

(iv) screening for liver damage.

It is important to note that the employer is required to make any prescribed tests available more often than specified if recommended by the examining physician. OSHA also requires that the employer provide examinations recommended by the physician to any employee exposed to MDA under emergency conditions. Due to the effects of high short-term exposures, it appears prudent to monitor medically such affected employees. However, trivial exposures which are peripherally related to an emergency do not trigger the requirement.

The employer is also required to provide the physician with the following information: a copy of this standard and its appendices; a description of the affected employee's duties as they relate to the employee exposure level; and information from the employee's previous medical examinations which is not readily available to the examining physician. Making this information available to the physician will aid in the evaluation of the employee's health in relation to assigned duties and fitness to wear personal protective equipment.

The employer is required to obtain a written opinion from the examining physician that contains the results of the medical examinations; the physician's opinion as to whether the employee has any detected medical conditions which would place the employee at increased risk of material health impairment from exposure to MDA; any recommended restrictions upon the employee's exposure to MDA or upon the use of protective clothing or equipment, such as respirators; and a statement that the employee has been informed by the physician of the results of the medical examination and of any MDA-related medical conditions which require further explanation or treatment. This written opinion must not reveal specific findings or diagnoses unrelated to occupational exposure to MDA, and a copy of the opinion must be provided to the affected employee.

The requirement that a physician's opinion be in written form will ensure that employers have had the benefit of this information. The requirement that an employee be provided with a copy of the physician's written opinion will ensure that the employee is informed of the results of the medical examination. The purpose of requiring that specific findings or diagnoses, unrelated to occupational exposure to MDA, not be included in the written opinion is to encourage employees to take the medical examination by removing the concern that the employer will obtain

information about their physical condition that has no relation to present occupational exposures.

Like the general industry standard this standard would also include a multiple physician review mechanism. This mechanism is required because OSHA believes this would aid in ensuring that employees take physical examinations. Finally, the standard contains provisions for removing an employee from exposure who has suffered reversible material impairment to health as a result of being exposed to MDA. OSHA believes that employees whose health has been adversely affected as a direct result of occupational exposure to MDA must be removed from exposure and must receive medical removal benefit protections. For a fuller discussion of the multiple physician review mechanism and the medical removal provisions, see the general industry summary above.

Paragraph (o). Recordkeeping

The final standard's requirements are consistent with Section 8(c)(3) of the OSH Act which provides for the promulgation of regulations requiring employers to maintain accurate records of employee exposures to potentially toxic substances or harmful physical agents which are required to be monitored or measured.

OSHA permits the use of objective data in order to be exempted from the standard. Records of objective data must be maintained to demonstrate that employees are not exposed to excessive airborne MDA concentrations or "dermally exposed to MDA", as defined.

For this final construction standard, OSHA also permits the use of historical monitoring data in order to meet the requirements for initial monitoring found in paragraph (f)(2) of this section. Records of historical monitoring data must be maintained to demonstrate that employees are not exposed to airborne concentrations of MDA in excess of the action level. While this specific recordkeeping language was not in the NPRM its substantive basis is found both in paragraph (f)(2) found at 54 FR 20731 and the definition of "Objective and historical data" found on the page before. In addition, this language is taken *verbatim* from the Committee's preamble at 52 FR 26869. OSHA believes that this language will help to clarify what is expected from an employer who chooses to use historical monitoring data to satisfy his initial monitoring obligations under the standard.

OSHA also requires that records be kept to identify the employee monitored and to reflect the employee's exposure accurately. Specifically, records must

include the following information: (a) The names and social security numbers of the employees sampled; (b) the number, duration, and results of each of the samples taken, including a description of the representative sampling procedure and equipment used to determine employee exposure where applicable; (c) a description of the operation involving exposure to MDA which is being monitored and the date on which monitoring is performed; (d) the type of respiratory protective devices, if any, worn by the employee; and (e) a description of the sampling and analytical methods used, and evidence of their accuracy.

OSHA also includes a provision for requiring the employer to keep an accurate medical record for each employee subject to medical surveillance. Section 8(c) of the Act authorizes the promulgation of regulations requiring any employer to keep such records regarding the employer's activities relating to the Act as are necessary or appropriate for the enforcement of the Act or for developing information regarding the causes and prevention of occupational illnesses. OSHA believes that medical records, like exposure monitoring records, are necessary and appropriate to both the enforcement of the standard and the development of information regarding the causes and prevention of illness.

As explained above, it is necessary to relate employees' medical conditions to their exposures to develop information regarding cause and prevention. Medical records are necessary and appropriate for this purpose. In addition, medical records are necessary for the proper evaluation of the employee's health.

The employer is also required to keep a record of any employee's medical removal and return to work status.

The standard requires that all records required to be kept shall be made available upon request to the Assistant Secretary and the Director of NIOSH for examination and copying. Access to these records is necessary for the agencies to monitor compliance with the standard. These records may also contain essential information which is necessary for the agencies to carry out their other statutory responsibilities.

The standard also provides for employees, former employees, and their designated representatives to have access to mandated records upon request. Section 8(c)(3) of the Act explicitly provides "employees or their representatives" with an opportunity to observe monitoring and to have access to the records of monitoring and exposures to toxic substances; and several other provisions of the Act

contemplate that employees and their representatives are entitled to play an active role in the enforcement of the Act. Employees and their representatives need to know relevant information concerning employee exposure to toxic substances and their health consequences if they are to benefit fully from these statutory rights.

In addition, access to exposure and medical records by employees, designated representatives, and OSHA is to be provided in accordance with 29 CFR 1910.20. Section 1910.20 is OSHA's generic standard for access to employee exposure and medical records (45 FR 35212). By its terms, it applies to records required by specific standards, such as this MDA standard, as well as records which are voluntarily created by employers. In general, it provides for unrestricted employee and designated representative access to exposure records. Unrestricted access to both kinds of records is allowed, but access to personally identifiable records is made subject to rules of agency practice and procedure concerning OSHA access to employee medical records, which have been published at 29 CFR 1913.10. An extensive discussion of the provisions and rationale for § 1920.20 may be found at 45 FR 35312; the discussion of § 1913.10 may be found at 45 FR 35384.

It is necessary to keep records for extended periods because of the long latency periods commonly observed for carcinogens. Cancer often cannot be detected until 20 or more years after onset of exposure. The extended retention period is therefore needed for two purposes. Diagnosis of disease in employees is assisted by having present and past exposure data as well as the results of the medical exams. Retaining records for extended periods also makes it possible at some future date to review the adequacy of the standard.

The time periods required for retention of exposure records and medical records are thirty years, and period of employment plus thirty years, respectively. These retention periods are consistent with those in the OSHA records access standard.

The standard requires certain employers to notify the Director in writing at least 3 months prior to the disposal of the records. Section 1910.20(h) contains further requirements regarding the transfer of records.

To increase the effectiveness of training goals the standard requires that the training material be made available, without cost, to all affected employees or their representatives.

OSHA recognizes the transient nature of the construction industry and the difficulties which this industry may have with recordkeeping requirements; it is for this reason that OSHA would not mandate the specific methods of recordkeeping. Employers are free to use the services of competent organizations such as industry trade associations and employee associations to maintain the required records. To reduce the costs and facilitate the recordkeeping some groups currently use centralized medical recordkeeping financed through employer contributions. Centralized recordkeeping could be instrumental in alleviating the problem of lost records associated with the transient nature of the construction workforce and the frequency of business closures in this sector.

Paragraph (p). Observation of Monitoring

The final standard also includes a provision for observation of exposure monitoring. This provision is in accordance with section 8(c) of the OSH Act which requires that employers provide employees and their representatives with the opportunity to observe monitoring of employee exposures to toxic substances or harmful physical agents. Observation procedures are set forth which require the observer, whether it be an employee or a designated representative, to be provided with the personal protective clothing and equipment that is required to be worn by the employees who are working in the area. The employer is required to assure the use of such clothing and equipment or respirators and is responsible for requiring that the observer complies with all other applicable safety and health procedures.

Paragraph (q). Effective dates

The standard becomes effective September 9, 1992. The effective date established in the final standard remains the same as the date which appeared in the proposed rule.

Paragraph (r). Appendices

Five appendices have been included at the end of this final standard. Appendices A, B, C, and D have been included primarily for purposes of information. None of the statements contained in appendices A, B, C, and D should be construed as establishing a mandatory requirement not otherwise imposed by the standard, or as detracting from an obligation which the standard does impose. However, the protocols for respiratory fit testing in appendix E are mandatory.

Appendix A contains information on the description and exposure levels of MDA. Also provided in appendix A is information on the health hazards associated with exposure, descriptions of protective clothing and equipment, emergency and first aid procedures, medical requirements, provisions for the observation of monitoring, access to exposure and medical records, and precautions for the safe use, handling, and storage of MDA.

Appendix B contains "substance technical guidelines" for MDA, including physical and chemical data, spill and leak procedures, including waste disposal methods, and other miscellaneous precautions for the safe handling of MDA.

Appendix C contains the medical surveillance guidelines for MDA. Included in these guidelines are the description of the routes of entry, the toxicology and symptoms and signs associated with MDA exposure, information on the treatment of acute toxic effects, and surveillance and preventive considerations, including hematology guidelines which may be useful to physicians in conducting the medical surveillance program required by paragraph (n) of this final standard.

Appendix D gives details of the sampling and analytical methods for use in monitoring employee exposures to MDA.

Appendix E gives detailed fit testing procedures that are to be followed for qualitative or quantitative fit testing of negative pressure respirators. Various protocols for qualitative and quantitative fit tests are outlined in detail.

All the Appendices are designed to aid the employer in complying with the requirements of the standard. Paragraph (l) of this final standard on the "communication of MDA hazards to employees" specifically requires that the contents of the standard and appendices A and B be made available to affected employees. Information contained in appendix C on medical surveillance is to be explained to affected employees. Appendix C also provides information needed by the physician to evaluate the results of the medical examination.

Paragraph (s). Start-Up Dates

The final standard contains start up dates for the various standard provisions. Compliance with these dates are based on the effective date. The dates originally proposed in the MDA rule have been modified to reflect a more logical schedule for compliance. These dates are based on economic and technological considerations discussed in the regulatory impact analysis.

XI. Environmental Assessment; Findings of No Significant Impact

OSHA has reviewed the environmental impact in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality (CEQ) NEPA regulations (40 CFR part 1500), and OSHA's NEPA compliance procedures (29 CFR part 11).

As a result of this review, OSHA has determined that these regulations will have no impact on air, water or soil quality, plant or animal life, or the use of land or aspects of the external environment. Therefore, OSHA concludes there will be no significant impact on the general quality of the human environment outside the workplace, particularly in terms of ambient air quality, water quality, or solid waste disposal. No comments made at the public hearing or submitted to the record contradict this conclusion.

XII. State Plan Requirements

The 25 States and territories with their own OSHA-approved occupational safety and health plans must revise their existing standards within six months of the publication date of the final standards or show OSHA why there is no need for action, e.g., because existing state standards are already "at least as effective" as the new Federal standards. These States are: California, Connecticut (State and local government workers only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New York (State and local government workers only), North Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington and Wyoming. Until such time as a State standard is promulgated, Federal OSHA will provide interim enforcement assistance, as appropriate.

XIII. Federalism

The standards have been reviewed in accordance with Executive Order 12612 (52 FR 41685; October 30, 1987) regarding Federalism. This Order requires that agencies, to the extent possible, refrain from limiting State policy options, consult with States prior to taking any actions that would restrict State policy options, and take such actions only when there is clear constitutional authority and the presence of a problem of national scope. The Order provides for preemption of State law only if there is a clear constitutional authority and the presence of a problem of national scope. Additionally, the Order provides for preemption of State law only if there

is a clear Congressional intent for the agency to do so. Any such preemption is to be limited to the extent possible.

Section 18 of the Occupational Safety and Health Act (OSH Act), expresses Congress' clear intent to preempt State laws relating to issues with respect to which Federal OSHA has promulgated occupational safety or health standards. Under the OSH Act a State can avoid preemption only if it submits, and obtains Federal approval of, a plan for the development of such standards and their enforcement. Occupational safety and health standards developed by such Plan-States must, among other things, be at least as effective in providing safe and healthful employment and places of employment as the Federal standards.

The Federally promulgated MDA standard is drafted so that workers in every State would be protected by general, performance-oriented standards. To the extent that there are State or regional peculiarities that could alter work practices, States with occupational safety and health plans approved under section 18 of the OSH Act would be able to develop their own State standards to deal with any special problems. Moreover, the performance nature of this final standard, of and by itself, allows for flexibility by States and contractors to provide as much safety as possible using varying methods consonant with conditions in each State.

In short, there is a clear national problem related to occupational safety and health of workers. While the individual States, if all acted, might be able collectively to deal with the safety problems involved, most have not elected to do so in the seventeen years since the enactment of the OSH Act. Those States which have elected to participate under section 18 of the OSHA Act would not be preempted by this final regulation and would be able to deal with special, local conditions within the framework provided by this performance-oriented standard while ensuring that their standards are at least as effective as the Federal standard.

XIV. Clearance of Information Collection Requirements

5 CFR 1320 sets forth procedures for agencies to follow in obtaining OMB clearance for information collection requirements under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. The final MDA standards require the employer to allow OSHA access to records. In accordance with the provisions of the Paperwork Reduction Act and the regulations issued pursuant thereto, OSHA certifies that it has submitted the information collection to

OMB for review under section 3504(h) of that Act.

Public reporting burden for this collection of information is estimated to average five minutes per response to allow OSHA compliance officers access to the employer's records. Send comments regarding this burden estimate, or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Information Management, Department of Labor, room N-1301, 200 Constitution Avenue, NW., Washington, DC 20210; and to the Office of Information and Regulatory Affairs Management and Budget, Washington, DC 20503.

XV. Authority and Signature

This document was prepared under the direction of Dorothy L. Strunk, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

Accordingly, pursuant to sections 4, 6(b), 8(c), and 8(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); sec. 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); and 29 CFR part 1911; 29 CFR part 1910 and 1926 are amended as set forth below.

List of Subjects in 29 CFR Parts 1910 and 1926

Health, Occupational safety and health, Protective equipment, Respiratory protection, Carcinogen.

Signed at Washington, DC this 20th day of July, 1992.

Dorothy L. Strunk,

Acting Assistant Secretary of Labor for Occupational Safety and Health.

XVI. Regulatory Text

General Industry

PART 1910—[AMENDED]

1. The authority citation for subpart Z of 29 CFR part 1910 continues, in part, to read as follows:

Authority: Secs. 4, 6 and 8, Occupational Safety and Health Act, 29 U.S.C. 653, 655, 657, Secretary of Labor's Orders Nos. 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736), or 1-90(55 FR 9033) as applicable; and 29 CFR part 1911.

2. By revising a new paragraph (i) to § 1910.19 to read as follows:

§ 1910.19 Special provisions for air contaminants.

(i) *4,4'-Methylenedianiline (MDA)*. Section 1910.1050 shall apply to the exposure of every employee to MDA in every employment and place of employment covered by §§ 1910.13, 1910.14, 1910.15, or 1910.16, in lieu of any different standard on exposure to MDA which would otherwise be applicable by virtue of those sections.

3. By adding a new § 1910.1050 to read as follows:

§ 1910.1050 Methylenedianiline.

(a) *Scope and application*. (1) This section applies to all occupational exposures to MDA, Chemical Abstracts Service Registry No. 101-77-9, except as provided in paragraphs (a)(2) through (a)(7) of this section.

(2) Except as provided in paragraphs (a)(8) and (e)(5) of this section, this section does not apply to the processing, use, and handling of products containing MDA where initial monitoring indicates that the product is not capable of releasing MDA in excess of the action level under the expected conditions of processing, use, and handling which will cause the greatest possible release; and where no "dermal exposure to MDA" can occur.

(3) Except as provided in paragraph (a)(8) of this section, this section does not apply to the processing, use, and handling of products containing MDA where objective data are reasonably relied upon which demonstrate the product is not capable of releasing MDA under the expected conditions of processing, use, and handling which will cause the greatest possible release; and where no "dermal exposure to MDA" can occur.

(4) This section does not apply to the storage, transportation, distribution or sale of MDA in intact containers sealed in such a manner as to contain the MDA dusts, vapors, or liquids, except for the provisions of 29 CFR 1910.1200 and paragraph (d) of this section.

(5) This section does not apply to the construction industry as defined in 29 CFR 1910.12(b). (Exposure to MDA in the construction industry is covered by 29 CFR 1926.60).

(6) Except as provided in paragraph (a)(8) of this section, this section does not apply to materials in any form which contain less than 0.1% MDA by weight or volume.

(7) Except as provided in paragraph (a)(8) of this section, this section does not apply to "finished articles containing MDA."

(8) Where products containing MDA are exempted under paragraphs (a)(2) through (a)(7) of this section, the employer shall maintain records of the initial monitoring results or objective data supporting that exemption and the basis for the employer's reliance on the data, as provided in the recordkeeping provision of paragraph (n) of this section.

(b) *Definitions.* For the purpose of this section, the following definitions shall apply:

Action level means a concentration of airborne MDA of 5 ppb as an eight (8)-hour time-weighted average.

Assistant Secretary means the Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, or designee.

Authorized person means any person specifically authorized by the employer whose duties require the person to enter a regulated area, or any person entering such an area as a designated representative of employees, for the purpose of exercising the right to observe monitoring and measuring procedures under paragraph (o) of this section, or any other person authorized by the Act or regulations issued under the Act.

Container means any barrel, bottle, can, cylinder, drum, reaction vessel, storage tank, commercial packaging or the like, but does not include piping systems.

Dermal exposure to MDA occurs where employees are engaged in the handling, application or use of mixtures or materials containing MDA, with any of the following non-airborne forms of MDA:

(i) Liquid, powdered, granular, or flaked mixtures containing MDA in concentrations greater than 0.1% by weight or volume; and

(ii) Materials other than "finished articles" containing MDA in concentrations greater than 0.1% by weight or volume.

Director means the Director of the National Institute for Occupational Safety and Health, U.S. Department of Health and Human Services, or designee.

Emergency means any occurrence such as, but not limited to, equipment failure, rupture of containers, or failure of control equipment which results in an unexpected and potentially hazardous release of MDA.

Employee exposure means exposure to MDA which would occur if the employee were not using respirators or protective work clothing and equipment.

Finished article containing MDA is defined as a manufactured item:

(i) Which is formed to a specific shape or design during manufacture;

(ii) Which has end use function(s) dependent in whole or part upon its shape or design during end use; and

(iii) Where applicable, is an item which is fully cured by virtue of having been subjected to the conditions (temperature, time) necessary to complete the desired chemical reaction.

4,4' Methyleneedianiline or MDA means the chemical, 4,4'-diaminodiphenylmethane, Chemical Abstract Service Registry number 101-77-9, in the form of a vapor, liquid, or solid. The definition also includes the salts of MDA.

Regulated areas means areas where airborne concentrations of MDA exceed or can reasonably be expected to exceed, the permissible exposure limits, or where dermal exposure to MDA can occur.

STEL means short term exposure limit as determined by any 15 minute sample period.

(c) *Permissible exposure limits (PEL).* The employer shall assure that no employee is exposed to an airborne concentration of MDA in excess of ten parts per billion (10 ppb) as an 8-hour time-weighted average or a STEL of 100 ppb.

(d) *Emergency situations*—(1) *Written plan.* (i) A written plan for emergency situations shall be developed for each workplace where there is a possibility of an emergency. Appropriate portions of the plan shall be implemented in the event of an emergency.

(ii) The plan shall specifically provide that employees engaged in correcting emergency conditions shall be equipped with the appropriate personal protective equipment and clothing as required in paragraphs (h) and (i) of this section until the emergency is abated.

(iii) The plan shall specifically include provisions for alerting and evacuating affected employees as well as the elements prescribed in 29 CFR 1910.38, "Employee emergency plans and fire prevention plans."

(2) *Alerting employees.* Where there is the possibility of employee exposure to MDA due to an emergency, means shall be developed to alert promptly those employees who have the potential to be directly exposed. Affected employees not engaged in correcting emergency conditions shall be evacuated immediately in the event that an emergency occurs. Means shall also be developed and implemented for alerting other employees who may be exposed as a result of the emergency.

(e) *Exposure monitoring*—(1) *General.* (i) Determinations of employee exposure shall be made from breathing zone air

samples that are representative of each employee's exposure to airborne MDA over an eight (8) hour period. Determination of employee exposure to the STEL shall be made from breathing zone air samples collected over a 15 minute sampling period.

(ii) Representative employee exposure shall be determined on the basis of one or more samples representing full shift exposure for each shift for each job classification in each work area where exposure to MDA may occur.

(iii) Where the employer can document that exposure levels are equivalent for similar operations in different work shifts, the employer shall only be required to determine representative employee exposure for that operation during one shift.

(2) *Initial monitoring.* Each employer who has a workplace or work operation covered by this standard shall perform initial monitoring to determine accurately the airborne concentrations of MDA to which employees may be exposed.

(3) *Periodic monitoring and monitoring frequency.* (i) If the monitoring required by paragraph (e)(2) of this section reveals employee exposure at or above the action level, but at or below the PELs, the employer shall repeat such representative monitoring for each such employee at least every six (6) months.

(ii) If the monitoring required by paragraph (e)(2) of this section reveals employee exposure above the PELs, the employer shall repeat such monitoring for each such employee at least every three (3) months.

(iii) The employer may alter the monitoring schedule from every three months to every six months for any employee for whom two consecutive measurements taken at least 7 days apart indicate that the employee exposure has decreased to below the TWA but above the action level.

(4) *Termination of monitoring.* (i) If the initial monitoring required by paragraph (e)(2) of this section reveals employee exposure to be below the action level, the employer may discontinue the monitoring for that employee, except as otherwise required by paragraph (e)(5) of this section.

(ii) If the periodic monitoring required by paragraph (e)(3) of this section reveals that employee exposures, as indicated by at least two consecutive measurements taken at least 7 days apart, are below the action level the employer may discontinue the monitoring for that employee, except as otherwise required by paragraph (e)(5) of this section.

(5) *Additional monitoring.* The employer shall institute the exposure monitoring required under paragraphs (e)(2) and (e)(3) of this section when there has been a change in production process, chemicals present, control equipment, personnel, or work practices which may result in new or additional exposures to MDA, or when the employer has any reason to suspect a change which may result in new or additional exposures.

(6) *Accuracy of monitoring.* Monitoring shall be accurate, to a confidence level of 95 percent, to within plus or minus 25 percent for airborne concentrations of MDA.

(7) *Employee notification of monitoring results.* (i) The employer shall, within 15 working days after the receipt of the results of any monitoring performed under this standard, notify each employee of these results, in writing, either individually or by posting of results in an appropriate location that is accessible to affected employees.

(ii) The written notification required by paragraph (e)(7)(i) of this section shall contain the corrective action being taken by the employer to reduce the employee exposure to or below the PELs, wherever the PELs are exceeded.

(8) *Visual monitoring.* The employer shall make routine inspections of employee hands, face and forearms potentially exposed to MDA. Other potential dermal exposures reported by the employee must be referred to the appropriate medical personnel for observation. If the employer determines that the employee has been exposed to MDA the employer shall:

(i) Determine the source of exposure;

(ii) Implement protective measures to correct the hazard; and

(iii) Maintain records of the corrective actions in accordance with paragraph (n) of this section.

(f) *Regulated areas—(1) Establishment—(i) Airborne exposures.* The employer shall establish regulated areas where airborne concentrations of MDA exceed or can reasonably be expected to exceed, the permissible exposure limits.

(ii) *Dermal exposures.* Where employees are subject to dermal exposure to MDA the employer shall establish those work areas as regulated areas.

(2) *Demarcation.* Regulated areas shall be demarcated from the rest of the workplace in a manner that minimizes

the number of persons potentially exposed.

(3) *Access.* Access to regulated areas shall be limited to authorized persons.

(4) *Personal protective equipment and clothing.* Each person entering a regulated area shall be supplied with, and required to use, the appropriate personal protective clothing and equipment in accordance with paragraphs (h) and (i) of this section.

(5) *Prohibited activities.* The employer shall ensure that employees do not eat, drink, smoke, chew tobacco or gum, or apply cosmetics in regulated areas.

(g) *Methods of compliance—(1) Engineering controls and work practices.* (i) The employer shall institute engineering controls and work practices to reduce and maintain employee exposure to MDA at or below the PELs except to the extent that the employer can establish that these controls are not feasible or where the provisions of paragraph (g)(1)(ii) or (h)(1) (i) through (iv) of this section apply.

(ii) Wherever the feasible engineering controls and work practices which can be instituted are not sufficient to reduce employee exposure to or below the PELs, the employer shall use them to reduce employee exposure to the lowest levels achievable by these controls and shall supplement them by the use of respiratory protective devices which comply with the requirements of paragraph (h) of this section.

(2) *Compliance program.* (i) The employer shall establish and implement a written program to reduce employee exposure to or below the PELs by means of engineering and work practice controls, as required by paragraph (g)(1) of this section, and by use of respiratory protection where permitted under this section. The program shall include a schedule for periodic maintenance (e.g., leak detection) and shall include the written plan for emergency situations as specified in paragraph (d) of this section.

(ii) Upon request this written program shall be furnished for examination and copying to the Assistant Secretary, the Director, affected employees, and designated employee representatives. The employer shall review and, as necessary, update such plans at least once every 12 months to make certain they reflect the current status of the program.

(3) *Employee rotation.* Employee rotation shall not be permitted as a means of reducing exposure.

(h) *Respiratory protection—(1) General.* The employer shall provide respirators, and ensure that they are used, where required by this section. Respirators shall be used in the following circumstances:

(i) During the time period necessary to install or implement feasible engineering and work practice controls;

(ii) In work operations for which the employer establishes that engineering and work practice controls are not feasible;

(iii) In work situations where feasible engineering and work practice controls are not yet sufficient to reduce exposure to or below the PEL; and

(iv) In emergencies.

(2) *Respirator selection.* (i) Where respirators are required or allowed under this section, the employer shall select and provide, at no cost to the employee, the appropriate respirator as specified in Table 1, and shall assure that the employee uses the respirator provided.

(ii) The employer shall select respirators from among those approved by the Mine Safety and Health Administration and the National Institute for Occupational Safety and Health under the provisions of 30 CFR part 11.

(iii) Any employee who cannot wear a negative pressure respirator shall be given the option of wearing a positive pressure respirator or any supplied-air respirator operated in the continuous flow or pressure demand mode.

(3) *Respirator program.* The employer shall institute a respiratory protection program in accordance with 29 CFR 1910.134(b), (d), (e), and (f).

(4) *Respirator use.* (i) Where air-purifying respirators (cartridge or canister) are used, the employer shall replace the air purifying element as needed to maintain the effectiveness of the respirator. The employer shall ensure that each cartridge is dated at the beginning of use.

(ii) Employees who wear respirators shall be allowed to leave the regulated area to readjust the facepiece or to wash their faces and to wipe clean the facepieces on their respirators in order to minimize potential skin irritation associated with respirator use.

TABLE 1.—RESPIRATORY PROTECTION FOR MDA

Airborne concentration of MDA or condition of use	Respirator type
a. Less than or equal to $10 \times \text{PEL}$	(1) Half-Mask Respirator with HEPA ¹ Cartridge. ²
b. Less than or equal to $50 \times \text{PEL}$	(1) Full facepiece Respirator with HEPA ¹ Cartridge or Canister. ²
c. Less than or equal to $1000 \times \text{PEL}$	(1) Full facepiece powered air-purifying respirator with HEPA ¹ cartridges. ²
d. Greater than $1000 \times \text{PEL}$ or unknown concentrations.....	(1) Self-contained breathing apparatus with full facepiece in positive pressure mode. (2) Full facepiece positive pressure demand supplied-air respirator with auxiliary self-contained air supply.
e. Escape.....	(1) Any full facepiece air-purifying respirator with HEPA ¹ cartridges; ² (2) Any positive pressure or continuous flow self-contained breathing apparatus with full facepiece or hood.
f. Firefighting.....	(1) Full facepiece self-contained breathing apparatus in positive pressure demand mode.

NOTE: Respirators assigned for higher environmental concentrations may be used at lower concentrations.

¹ High Efficiency Particulate in Air filter (HEPA) means a filter that is at least 99.97 percent efficient against mono-dispersed particles of 0.3 micrometers or larger.

² Combination HEPA/Organic Vapor Cartridges shall be used whenever MDA in liquid form or a process requiring heat is used.

(5) *Respirator fit testing.* (i) The employer shall perform and record the results of either quantitative or qualitative fit tests at the time of initial fitting and at least annually thereafter for each employee wearing a negative pressure respirator. The test shall be used to select a respirator facepiece which provides the required protection as prescribed in Table 1.

(ii) The employer shall follow the test protocols outlined in Appendix E of this standard for whichever type of fit testing the employer chooses.

(i) *Protective work clothing and equipment—(1) Provision and use.* Where employees are subject to dermal exposure to MDA, where liquids containing MDA can be splashed into the eyes, or where airborne concentrations of MDA are in excess of the PEL, the employer shall provide, at no cost to the employee, and ensure that the employee uses, appropriate protective work clothing and equipment which prevent contact with MDA such as, but not limited to:

(i) Aprons, coveralls or other full-body work clothing;

(ii) Gloves, head coverings, and foot coverings; and

(iii) Face shields, chemical goggles; or

(iv) Other appropriate protective equipment which comply with § 1910.133.

(2) *Removal and storage.* (i) The employer shall ensure that, at the end of their work shift, employees remove MDA-contaminated protective work clothing and equipment that is not routinely removed throughout the day in change rooms provided in accordance with the provisions established for change rooms.

(ii) The employer shall ensure that, during their work shift, employees remove all other MDA-contaminated protective work clothing or equipment before leaving a regulated area.

(iii) The employer shall ensure that no employee takes MDA-contaminated

work clothing or equipment out of the change room, except those employees authorized to do so for the purpose of laundering, maintenance, or disposal.

(iv) MDA-contaminated work clothing or equipment shall be placed and stored in closed containers which prevent dispersion of the MDA outside the container.

(v) Containers of MDA-contaminated protective work clothing or equipment which are to be taken out of change rooms or the workplace for cleaning, maintenance, or disposal, shall bear labels warning of the hazards of MDA.

(3) *Cleaning and replacement.* (i) The employer shall provide the employee with clean protective clothing and equipment. The employer shall ensure that protective work clothing or equipment required by this paragraph is cleaned, laundered, repaired, or replaced at intervals appropriate to maintain its effectiveness.

(ii) The employer shall prohibit the removal of MDA from protective work clothing or equipment by blowing, shaking, or any methods which allow MDA to re-enter the workplace.

(iii) The employer shall ensure that laundering of MDA-contaminated clothing shall be done so as to prevent the release of MDA in the workplace.

(iv) Any employer who gives MDA-contaminated clothing to another person for laundering shall inform such person of the requirement to prevent the release of MDA.

(v) The employer shall inform any person who launders or cleans protective clothing or equipment contaminated with MDA of the potentially harmful effects of exposure.

(vi) MDA-contaminated clothing shall be transported in properly labeled, sealed, impermeable bags or containers.

(j) *Hygiene facilities and practices—(1) Change rooms.*

(i) The employer shall provide clean change rooms for employees, who must wear protective clothing, or who must

use protective equipment because of their exposure to MDA.

(ii) Change rooms must be equipped with separate storage for protective clothing and equipment and for street clothes which prevents MDA contamination of street clothes.

(2) *Showers.* (i) The employer shall ensure that employees, who work in areas where there is the potential for exposure resulting from airborne MDA (e.g., particulates or vapors) above the action level, shower at the end of the work shift.

(A) Shower facilities required by this paragraph shall comply with § 1910.141(d)(3).

(B) The employer shall ensure that employees who are required to shower pursuant to the provisions contained herein do not leave the workplace wearing any protective clothing or equipment worn during the work shift.

(ii) Where dermal exposure to MDA occurs, the employer shall ensure that materials spilled or deposited on the skin are removed as soon as possible by methods which do not facilitate the dermal absorption of MDA.

(3) *Lunch facilities—(i) Availability and construction.* (A) Whenever food or beverages are consumed at the worksite and employees are exposed to MDA at or above the PEL or are subject to dermal exposure to MDA the employer shall provide readily accessible lunch areas.

(B) Lunch areas located within the workplace and in areas where there is the potential for airborne exposure to MDA at or above the PEL shall have a positive pressure, temperature controlled, filtered air supply.

(C) Lunch areas may not be located in areas within the workplace where the potential for dermal exposure to MDA exists.

(ii) The employer shall ensure that employees who have been subjected to dermal exposure to MDA or who have

been exposed to MDA above the PEL wash their hands and faces with soap and water prior to eating, drinking, smoking, or applying cosmetics.

(iii) The employer shall ensure that employees exposed to MDA do not enter lunch facilities with MDA-contaminated protective work clothing or equipment.

(k) *Communication of hazards to employees*—(1) *Signs and labels*. (i) The employer shall post and maintain legible signs demarcating regulated areas and entrances or accessways to regulated areas that bear the following legend:
DANGER MDA MAY CAUSE CANCER
LIVER TOXIN AUTHORIZED PERSONNEL
ONLY RESPIRATORS AND PROTECTIVE
CLOTHING MAY BE REQUIRED TO BE
WORN IN THIS AREA

(ii) The employer shall ensure that labels or other appropriate forms of warning are provided for containers of MDA within the workplace. The labels shall comply with the requirements of 29 CFR 1910.1200(f) and shall include the following legend:

(A) For Pure MDA
DANGER CONTAINS MDA MAY CAUSE
CANCER LIVER TOXIN

(B) For mixtures containing MDA
DANGER CONTAINS MDA CONTAINS
MATERIALS WHICH MAY CAUSE
CANCER LIVER TOXIN

(2) *Material safety data sheets (MSDS)*. (i) Employers shall obtain or develop, and shall provide access to their employees, to a material safety data sheet (MSDS) for MDA. In meeting this obligation, employers shall make appropriate use of the information found in Appendices A and B.

(ii) Employers who are manufacturers or importers shall:

(A) Comply with paragraph (k) (1) (ii) of this section as appropriate, and

(B) Comply with the requirement in OSHA's Hazard Communication standard, 29 CFR 1910.1200, that they deliver to downstream employers an MSDS for MDA.

(3) *Information and training*. (i) The employer shall provide employees with information and training on MDA, in accordance with 29 CFR 1910.1200(h), at the time of initial assignment and at least annually thereafter.

(ii) In addition to the information required under 29 CFR 1910.1200, the employer shall:

(A) Provide an explanation of the contents of this section, including appendices A and B, and indicate to employees where a copy of the standard is available;

(B) Describe the medical surveillance program required under paragraph (m) of this section, and explain the

information contained in Appendix C; and

(C) Describe the medical removal provision required under paragraph (m) of this section.

(4) *Access to training materials*. (i) The employer shall make readily available to all affected employees, without cost, all written materials relating to the employee training program, including a copy of this regulation.

(ii) The employer shall provide to the Assistant Secretary and the Director, upon request, all information and training materials relating to the employee information and training program.

(1) *Housekeeping*. (1) All surfaces shall be maintained as free as practicable of visible accumulations of MDA.

(2) The employer shall institute a program for detecting MDA leaks, spills, and discharges, including regular visual inspections of operations involving liquid or solid MDA.

(3) All leaks shall be repaired and liquid or dust spills cleaned up promptly.

(4) Surfaces contaminated with MDA may not be cleaned by the use of compressed air.

(5) Shoveling, dry sweeping, and other methods of dry clean-up of MDA may be used where HEPA-filtered vacuuming and/or wet cleaning are not feasible or practical.

(6) Waste, scrap, debris, bags, containers, equipment, and clothing contaminated with MDA shall be collected and disposed of in a manner to prevent the re-entry of MDA into the workplace.

(m) *Medical surveillance*—(1) *General*. (i) The employer shall make available a medical surveillance program for employees exposed to MDA:

(A) Employees exposed at or above the action level for 30 or more days per year;

(B) Employees who are subject to dermal exposure to MDA for 15 or more days per year;

(C) Employees who have been exposed in an emergency situation;

(D) Employees whom the employer, based on results from compliance with paragraph (e)(8) of this section, has reason to believe are being dermally exposed; and

(E) Employees who show signs or symptoms of MDA exposure.

(ii) The employer shall ensure that all medical examinations and procedures are performed by, or under the supervision of, a licensed physician, at a reasonable time and place, and provided without cost to the employee.

(2) *Initial examinations*. (i) Within 150 days of the effective date of this standard, or before the time of initial assignment, the employer shall provide each employee covered by paragraph (m)(1)(i) of this section with a medical examination including the following elements:

(A) A detailed history which includes:
(1) Past work exposure to MDA or any other toxic substances;

(2) A history of drugs, alcohol, tobacco, and medication routinely taken (duration and quantity); and

(3) A history of dermatitis, chemical skin sensitization, or previous hepatic disease.

(B) A physical examination which includes all routine physical examination parameters, skin examination, and signs of liver disease.

(C) Laboratory tests including:

(1) Liver function tests and

(2) Urinalysis.

(D) Additional tests as necessary in the opinion of the physician.

(ii) No initial medical examination is required if adequate records show that the employee has been examined in accordance with the requirements of this section within the previous six months prior to the effective date of this standard or prior to the date of initial assignment.

(3) *Periodic examinations*. (i) The employer shall provide each employee covered by this section with a medical examination at least annually following the initial examination. These periodic examinations shall include at least the following elements:

(A) A brief history regarding any new exposure to potential liver toxins, changes in drug, tobacco, and alcohol intake, and the appearance of physical signs relating to the liver, and the skin;

(B) The appropriate tests and examinations including liver function tests and skin examinations; and

(C) Appropriate additional tests or examinations as deemed necessary by the physician.

(ii) If in the physicians' opinion the results of liver function tests indicate an abnormality, the employee shall be removed from further MDA exposure in accordance with paragraph (m)(9) of this section. Repeat liver function tests shall be conducted on advice of the physician.

(4) *Emergency examinations*. If the employer determines that the employee has been exposed to a potentially hazardous amount of MDA in an emergency situation as addressed in paragraph (d) of this section, the employer shall provide medical examinations in accordance with paragraphs (m)(3)(i) and (ii) of this

section. If the results of liver function testing indicate an abnormality, the employee shall be removed in accordance with paragraph (m)(9) of this section. Repeat liver function tests shall be conducted on the advice of the physician. If the results of the tests are normal, tests must be repeated two to three weeks from the initial testing. If the results of the second set of tests are normal and, on the advice of the physician, no additional testing is required.

(5) *Additional examinations.* Where the employee develops signs and symptoms associated with exposure to MDA, the employer shall provide the employee with an additional medical examination including a liver function test. Repeat liver function tests shall be conducted on the advice of the physician. If the results of the tests are normal, tests must be repeated two to three weeks from the initial testing. If the results of the second set of tests are normal and, on the advice of the physician, no additional testing is required.

(6) *Multiple physician review mechanism.* (i) If the employer selects the initial physician who conducts any medical examination or consultation provided to an employee under this section, and the employee has signs or symptoms of occupational exposure to MDA (which could include an abnormal liver function test), and the employee disagrees with the opinion of the examining physician, and this opinion could affect the employee's job status, the employee may designate an appropriate, mutually acceptable second physician:

(A) To review any findings, determinations, or recommendations of the initial physician; and

(B) To conduct such examinations, consultations, and laboratory tests as the second physician deems necessary to facilitate this review.

(ii) The employer shall promptly notify an employee of the right to seek a second medical opinion after each occasion that an initial physician conducts a medical examination or consultation pursuant to this section. The employer may condition its participation in, and payment for, the multiple physician review mechanism upon the employee doing the following within fifteen (15) days after receipt of the foregoing notification, or receipt of the initial physician's written opinion, whichever is later:

(A) The employee informing the employer that he or she intends to seek a second medical opinion, and

(B) The employee initiating steps to make an appointment with a second physician.

(iii) If the findings, determinations, or recommendations of the second physician differ from those of the initial physician, then the employer and the employee shall assure that efforts are made for the two physicians to resolve any disagreement.

(iv) If the two physicians have been unable to resolve quickly their disagreement, then the employer and the employee through their respective physicians shall designate a third physician:

(A) To review any findings, determinations, or recommendations of the prior physicians; and

(B) To conduct such examinations, consultations, laboratory tests, and discussions with the prior physicians as the third physician deems necessary to resolve the disagreement of the prior physicians.

(v) The employer shall act consistent with the findings, determinations, and recommendations of the third physician, unless the employer and the employee reach an agreement which is otherwise consistent with the recommendations of at least one of the three physicians.

(7) *Information provided to the examining and consulting physicians.* (i) The employer shall provide the following information to the examining physician:

(A) A copy of this regulation and its appendices;

(B) A description of the affected employee's duties as they relate to the employee's potential exposure to MDA;

(C) The employee's current actual or representative MDA exposure level;

(D) A description of any personal protective equipment used or to be used; and

(E) Information from previous employment-related medical examinations of the affected employee.

(ii) The employer shall provide the foregoing information to a second physician under this section upon request either by the second physician, or by the employee.

(8) *Physician's written opinion.* (i) For each examination under this section, the employer shall obtain, and provide the employee with a copy of, the examining physician's written opinion within 15 days of its receipt. The written opinion shall include the following:

(A) The occupationally-pertinent results of the medical examination and tests;

(B) The physician's opinion concerning whether the employee has any detected medical conditions which would place the employee at increased

risk of material impairment of health from exposure to MDA;

(C) The physician's recommended limitations upon the employee's exposure to MDA or upon the employee's use of protective clothing or equipment and respirators; and

(D) A statement that the employee has been informed by the physician of the results of the medical examination and any medical conditions resulting from MDA exposure which require further explanation or treatment.

(ii) The written opinion obtained by the employer shall not reveal specific findings or diagnoses unrelated to occupational exposures.

(9) *Medical removal.*—(i) *Temporary medical removal of an employee.*—(A) *Temporary removal resulting from occupational exposure.* The employee shall be removed from work environments in which exposure to MDA is at or above the action level or where dermal exposure to MDA may occur, following an initial examination (paragraph (m)(2) of this section), periodic examinations (paragraph (m)(3) of this section), an emergency situation paragraph (m)(4) of this section, or an additional examination (paragraph (m)(5) of this section) in the following circumstances:

(1) When the employee exhibits signs and/or symptoms indicative of acute exposure to MDA; or

(2) When the examining physician determines that an employee's abnormal liver function tests are not associated with MDA exposure but that the abnormalities may be exacerbated as a result of occupational exposure to MDA.

(B) *Temporary removal due to a final medical determination.* (1) The employer shall remove an employee from work environments in which exposure to MDA is at or above the action level or where dermal exposure to MDA may occur, on each occasion that there is a final medical determination or opinion that the employee has a detected medical condition which places the employee at increased risk of material impairment to health from exposure to MDA.

(2) For the purposes of this section, the phrase "final medical determination" shall mean the outcome of the physician review mechanism used pursuant to the medical surveillance provisions of this section.

(3) Where a final medical determination results in any recommended special protective measures for an employee, or limitations on an employee's exposure to MDA, the employer shall implement and act consistent with the recommendation.

(ii) *Return of the employee to former job status.* (A) The employer shall return an employee to his or her former job status:

(1) When the employee no longer shows signs or symptoms of exposure to MDA, or upon the advice of the physician.

(2) When a subsequent final medical determination results in a medical finding, determination, or opinion that the employee no longer has a detected medical condition which places the employee at increased risk of material impairment to health from exposure to MDA.

(B) For the purposes of this section, the requirement that an employer return an employee to his or her former job status is not intended to expand upon or restrict any rights an employee has or would have had, absent temporary medical removal, to a specific job classification or position under the terms of a collective bargaining agreement.

(iii) *Removal of other employee special protective measure or limitations.* The employer shall remove any limitations placed on an employee, or end any special protective measures provided to an employee, pursuant to a final medical determination, when a subsequent final medical determination indicates that the limitations or special protective measures are no longer necessary.

(iv) *Employer options pending a final medical determination.* Where the physician review mechanism used pursuant to the medical surveillance provisions of this section, has not yet resulted in a final medical determination with respect to an employee, the employer shall act as follows:

(A) *Removal.* The employer may remove the employee from exposure to MDA, provide special protective measures to the employee, or place limitations upon the employee, consistent with the medical findings, determinations, or recommendations of any of the physicians who have reviewed the employee's health status.

(B) *Return.* The employer may return the employee to his or her former job status, and end any special protective measures provided to the employee, consistent with the medical findings, determinations, or recommendations of any of the physicians who have reviewed the employee's health status, with two exceptions.

(1) If the initial removal, special protection, or limitation of the employee resulted from a final medical determination which differed from the findings, determinations, or

recommendations of the initial physician; or

(2) If the employee has been on removal status for the preceding six months as a result of exposure to MDA, then the employer shall await a final medical determination.

(v) *Medical removal protection benefits—(A) Provisions of medical removal protection benefits.* The employer shall provide to an employee up to six (6) months of medical removal protection benefits on each occasion that an employee is removed from exposure to MDA or otherwise limited pursuant to this section.

(B) *Definition of medical removal protection benefits.* For the purposes of this section, the requirement that an employer provide medical removal protection benefits means that the employer shall maintain the earnings, seniority, and other employment rights and benefits of an employee as though the employee had not been removed from normal exposure to MDA or otherwise limited.

(C) *Follow-up medical surveillance during the period of employee removal or limitations.* During the period of time that an employee is removed from normal exposure to MDA or otherwise limited, the employer may condition the provision of medical removal protection benefits upon the employee's participation in follow-up medical surveillance made available pursuant to this section.

(D) *Workers' compensation claims.* If a removed employee files a claim for workers' compensation payments for a MDA-related disability, then the employer shall continue to provide medical removal protection benefits pending disposition of the claim. To the extent that an award is made to the employee for earnings lost during the period of removal, the employer's medical removal protection obligation shall be reduced by such amount. The employer shall receive no credit for workers' compensation payments received by the employee for treatment-related expenses.

(E) *Other credits.* The employer's obligation to provide medical removal protection benefits to a removed employee shall be reduced to the extent that the employee receives compensation for earnings lost during the period of removal either from a publicly or employer-funded compensation program, or receives income from non-MDA-related employment with any employer made possible by virtue of the employee's removal.

(F) *Employees who do not recover within the 6 months of removal.* The

employer shall take the following measures with respect to any employee removed from exposure to MDA:

(1) The employer shall make available to the employee a medical examination pursuant to this section to obtain a final medical determination with respect to the employee;

(2) The employer shall assure that the final medical determination obtained indicates whether or not the employee may be returned to his or her former job status, and, if not, what steps should be taken to protect the employee's health;

(3) Where the final medical determination has not yet been obtained, or, once obtained indicates that the employee may not yet be returned to his or her former job status, the employer shall continue to provide medical removal protection benefits to the employee until either the employee is returned to former job status, or a final medical determination is made that the employee is incapable of ever safely returning to his or her former job status; and

(4) Where the employer acts pursuant to a final medical determination which permits the return of the employee to his or her former job status, despite what would otherwise be an abnormal liver function test, later questions concerning removing the employee again shall be decided by a final medical determination. The employer need not automatically remove such an employee pursuant to the MDA removal criteria provided by this section.

(vi) *Voluntary removal or restriction of an employee.* Where an employer, although not required by this section to do so, removes an employee from exposure to MDA or otherwise places limitations on an employee due to the effects of MDA exposure on the employee's medical condition, the employer shall provide medical removal protection benefits to the employee equal to that required by paragraph (m)(9)(v) of this section.

(n) *Recordkeeping—(1) Monitoring data for exempted employers.* (i) Where as a result of the initial monitoring the processing, use, or handling of products made from or containing MDA are exempted from other requirements of this section under paragraph (a)(2) of this section, the employer shall establish and maintain an accurate record of monitoring relied on in support of the exemption.

(ii) This record shall include at least the following information:

(A) The product qualifying for exemption;

(B) The source of the monitoring data (e.g., was monitoring performed by the employer or a private contractor);

(C) The testing protocol, results of testing, and/or analysis of the material for the release of MDA;

(D) A description of the operation exempted and how the data support the exemption (e.g., are the monitoring data representative of the conditions at the affected facility); and

(E) Other data relevant to the operations, materials, processing, or employee exposures covered by the exemption.

(iii) The employer shall maintain this record for the duration of the employer's reliance upon such objective data.

(2) *Objective data for exempted employers.* (i) Where the processing, use, or handling of products made from or containing MDA are exempted from other requirements of this section under paragraph (a) of this section, the employer shall establish and maintain an accurate record of objective data relied upon in support of the exemption.

(ii) This record shall include at least the following information:

(A) The product qualifying for exemption;

(B) The source of the objective data;

(C) The testing protocol, results of testing, and/or analysis of the material for the release of MDA;

(D) A description of the operation exempted and how the data support the exemption; and

(E) Other data relevant to the operations, materials, processing, or employee exposures covered by the exemption.

(iii) The employer shall maintain this record for the duration of the employer's reliance upon such objective data.

(3) *Exposure measurements.* (i) The employer shall establish and maintain an accurate record of all measurements required by paragraph (e) of this section, in accordance with 29 CFR 1910.20.

(ii) This record shall include:

(A) The dates, number, duration, and results of each of the samples taken, including a description of the procedure used to determine representative employee exposures;

(B) Identification of the sampling and analytical methods used;

(C) A description of the type of respiratory protective devices worn, if any; and

(D) The name, social security number, job classification and exposure levels of the employee monitored and all other employees whose exposure the measurement is intended to represent.

(iii) The employer shall maintain this record for at least 30 years, in accordance with 29 CFR 1910.20.

(4) *Medical surveillance.* (i) The employer shall establish and maintain an accurate record for each employee subject to medical surveillance required by paragraph (m) of this section, in accordance with 29 CFR 1910.20.

(ii) This record shall include:

(A) The name, social security number and description of the duties of the employee;

(B) The employer's copy of the physician's written opinion on the initial, periodic, and any special examinations, including results of medical examination and all tests, opinions, and recommendations;

(C) Results of any airborne exposure monitoring done for that employee and the representative exposure levels supplied to the physician; and

(D) Any employee medical complaints related to exposure to MDA;

(iii) The employer shall keep, or assure that the examining physician keeps, the following medical records:

(A) A copy of this standard and its appendices, except that the employer may keep one copy of the standard and its appendices for all employees provided the employer references the standard and its appendices in the medical surveillance record of each employee;

(B) A copy of the information provided to the physician as required by any paragraphs in the regulatory text;

(C) A description of the laboratory procedures and a copy of any standards or guidelines used to interpret the test results or references to the information;

(D) A copy of the employee's medical and work history related to exposure to MDA; and

(iv) The employer shall maintain this record for at least the duration of employment plus 30 years, in accordance with 29 CFR 1910.20.

(5) *Medical removals.* (i) The employer shall establish and maintain an accurate record for each employee removed from current exposure to MDA pursuant to paragraph (m) of this section.

(ii) Each record shall include:

(A) The name and social security number of the employee;

(B) The date of each occasion that the employee was removed from current exposure to MDA as well as the corresponding date on which the employee was returned to his or her former job status;

(C) A brief explanation of how each removal was or is being accomplished; and

(D) A statement with respect to each removal indicating the reason for the removal.

(iii) The employer shall maintain each medical removal record for at least the duration of an employee's employment plus 30 years.

(6) *Availability.* (i) The employer shall assure that records required to be maintained by this section shall be made available, upon request, to the Assistant Secretary and the Director for examination and copying.

(ii) Employee exposure monitoring records required by this section shall be provided upon request for examination and copying to employees, employee representatives, and the Assistant Secretary in accordance with 29 CFR 1910.20 (a)-(e) and (g)-(i).

(iii) Employee medical records required by this section shall be provided upon request for examination and copying, to the subject employee, to anyone having the specific written consent of the subject employee, and to the Assistant Secretary in accordance with 29 CFR 1910.20.

(7) *Transfer of records.* (i) The employer shall comply with the requirements involving transfer of records set forth in 29 CFR 1910.20(h).

(ii) If the employer ceases to do business and there is no successor employer to receive and retain the records for the prescribed period, the employer shall notify the Director, at least 90 days prior to disposal, and transmit the records to the Director if so requested by the Director within that period.

(o) *Observation of monitoring—(1) Employee observation.* The employer shall provide affected employees, or their designated representatives, an opportunity to observe the measuring or monitoring of employee exposure to MDA conducted pursuant to paragraph (e) of this section.

(2) *Observation procedures.* When observation of the measuring or monitoring of employee exposure to MDA requires entry into areas where the use of protective clothing and equipment or respirators is required, the employer shall provide the observer with personal protective clothing and equipment or respirators required to be worn by employees working in the area, assure the use of such clothing and equipment or respirators, and require the observer to comply with all other applicable safety and health procedures.

(p) *Effective date.* This standard shall become effective September 9, 1992.

(q) *Appendices.* The information contained in appendices A, B, C and D of this section is not intended by itself, to create any additional obligations not otherwise imposed by this standard nor detract from any existing obligation. The

protocols for respiratory fit testing in appendix E of this section are mandatory.

(r) *Startup dates.* Compliance with all obligations of this standard commence on the effective date except as follows:

(1) Initial monitoring under paragraph (e)(2) of this section shall be completed as soon as possible but no later than December 8, 1992.

(2) Medical examinations under paragraph (m) of this section shall be completed as soon as possible but no later than February 8, 1993.

(3) Emergency plans required by paragraph (d) of this section shall be provided and available for inspection and copying as soon as possible but no later than January 7, 1993.

(4) Initial training and education shall be completed as soon as possible but no later than January 7, 1993.

(5) Hygiene and lunchroom facilities under paragraph (j) shall be in operation as soon as possible but no later than September 9, 1993.

(6) Respiratory Protection required by paragraph (h) of this section shall be provided as soon as possible but no later than January 7, 1993.

(7) Written compliance plans required by paragraph (g)(2) of this section shall be completed and available for inspection and copying as soon as possible but no later than January 7, 1993.

(8) OSHA shall enforce the permissible exposure limits in paragraph (c) of this section no earlier than January 7, 1993.

(9) Engineering controls needed to achieve the PELs must be in place September 9, 1993.

(10) Personal protective clothing required by paragraph (i) of this section shall be available January 7, 1993.

Appendix A to Section 1910.1050.—Substance Data Sheet, for 4,4'-Methylenedianiline

I. Substance Identification

A. Substance: Methylenedianiline (MDA)

B. Permissible Exposure:

1. Airborne: Ten parts per billion parts of air (10 ppb), time-weighted average (TWA) for an 8-hour workday and an action level of five parts per billion parts of air (5 ppb).

2. Dermal: Eye contact and skin contact with MDA are not permitted.

C. Appearance and odor: White to tan solid; amine odor

II. Health Hazard Data

A. Ways in which MDA affects your health. MDA can affect your health if you inhale it, or if it comes in contact with your skin or eyes. MDA is also harmful if you happen to swallow it. Do not get MDA in eyes, on skin, or on clothing.

B. Effects of overexposure. 1. Short-term (acute) overexposure: Overexposure to MDA may produce fever, chills, loss of appetite,

vomiting, jaundice. Contact may irritate skin, eyes and mucous membranes. Sensitization may occur.

2. Long-term (chronic) exposure. Repeated or prolonged exposure to MDA, even at relatively low concentrations, may cause cancer. In addition, damage to the liver, kidneys, blood, and spleen may occur with long term exposure.

3. Reporting signs and symptoms: You should inform your employer if you develop any signs or symptoms which you suspect are caused by exposure to MDA including yellow staining of the skin.

III. Protective Clothing and Equipment

A. Respirators. Respirators are required for those operations in which engineering controls or work practice controls are not adequate or feasible to reduce exposure to the permissible limit. If respirators are worn, they must have the joint Mine Safety and Health Administration and National Institute for Occupational Safety and Health (NIOSH) seal of approval, and cartridges or canisters must be replaced as necessary to maintain the effectiveness of the respirator. If you experience difficulty breathing while wearing a respirator, you may request a positive pressure respirator from your employer. You must be thoroughly trained to use the assigned respirator, and the training will be provided by your employer.

MDA does not have a detectable odor except at levels well above the permissible exposure limits. Do not depend on odor to warn you when a respirator canister is exhausted. If you can smell MDA while wearing a respirator, proceed immediately to fresh air. If you experience difficulty breathing while wearing a respirator, tell your employer.

B. Protective Clothing. You may be required to wear coveralls, aprons, gloves, face shields, or other appropriate protective clothing to prevent skin contact with MDA. Where protective clothing is required, your employer is required to provide clean garments to you, as necessary, to assure that the clothing protects you adequately. Replace or repair impervious clothing that has developed leaks.

MDA should never be allowed to remain on the skin. Clothing and shoes which are not impervious to MDA should not be allowed to become contaminated with MDA, and if they do, the clothing and shoes should be promptly removed and decontaminated. The clothing should be laundered to remove MDA or discarded. Once MDA penetrates shoes or other leather articles, they should not be worn again.

C. Eye protection. You must wear splashproof safety goggles in areas where liquid MDA may contact your eyes. Contact lenses should not be worn in areas where eye contact with MDA can occur. In addition, you must wear a face shield if your face could be splashed with MDA liquid.

IV. Emergency and First Aid Procedures

A. Eye and face exposure. If MDA is splashed into the eyes, wash the eyes for at least 15 minutes. See a doctor as soon as possible.

B. Skin exposure. If MDA is spilled on your clothing or skin, remove the contaminated

clothing and wash the exposed skin with large amounts of soap and water immediately. Wash contaminated clothing before you wear it again.

C. Breathing. If you or any other person breathes in large amounts of MDA, get the exposed person to fresh air at once. Apply artificial respiration if breathing has stopped. Call for medical assistance or a doctor as soon as possible. Never enter any vessel or confined space where the MDA concentration might be high without proper safety equipment and at least one other person present who will stay outside. A life line should be used.

D. Swallowing. If MDA has been swallowed and the patient is conscious, do not induce vomiting. Call for medical assistance or a doctor immediately.

V. Medical Requirements

If you are exposed to MDA at a concentration at or above the action level for more than 30 days per year, or exposed to liquid mixtures more than 15 days per year, your employer is required to provide a medical examination, including a medical history and laboratory tests, within 60 days of the effective date of this standard and annually thereafter. These tests shall be provided without cost to you. In addition, if you are accidentally exposed to MDA (either by ingestion, inhalation, or skin/eye contact) under conditions known or suspected to constitute toxic exposure to MDA, your employer is required to make special examinations and tests available to you.

VI. Observation of Monitoring

Your employer is required to perform measurements that are representative of your exposure to MDA and you or your designated representative are entitled to observe the monitoring procedure. You are entitled to observe the steps taken in the measurement procedure and to record the results obtained. When the monitoring procedure is taking place in an area where respirators or personal protective clothing and equipment are required to be worn, you and your representative must also be provided with, and must wear, the protective clothing and equipment.

VII. Access to Records

You or your representative are entitled to see the records of measurements of your exposure to MDA upon written request to your employer. Your medical examination records can be furnished to your physician or designated representative upon request by you to your employer.

VIII. Precautions for Safe Use, Handling and Storage

A. Material is combustible. Avoid strong acids and their anhydrides. Avoid strong oxidants. Consult supervisor for disposal requirements.

B. Emergency clean-up. Wear self-contained breathing apparatus and fully clothe the body in the appropriate personal protective clothing and equipment.

Appendix B to Section 1910.1050—Substance Technical Guidelines, MDA**I. Identification**

- A. Substance identification.
1. Synonyms: CAS No. 101-77-9. 4,4'-methylenedianiline; 4,4'-methylenedianiline; methylenedianiline; dianilinomethane.
 2. Formula: $C_{13}H_{14}N_2$

II. Physical Data

1. Appearance and Odor: White to tan solid; amine odor
2. Molecular Weight: 198.26
3. Boiling Point: 398-399 degrees C at 760 mm Hg
4. Melting Point: 88-93 degrees C (190-100 degrees F)
5. Vapor Pressure: 9 mmHg at 232 degrees C
6. Evaporation Rate (n-butyl acetate = 1): Negligible
7. Vapor Density (Air=1): Not Applicable
8. Volatile Fraction by Weight: Negligible
9. Specific Gravity (Water=1): Slight
10. Heat of Combustion: -8.40 kcal/g
11. Solubility in Water: Slightly soluble in cold water, very soluble in alcohol, benzene, ether, and many organic solvents.

III. Fire, Explosion, and Reactivity Hazard Data

1. Flash Point: 190 degrees C (374 degrees F) Setaflash closed cup
2. Flash Point: 226 degrees C (439 degrees F) Cleveland open cup
3. Extinguishing Media: Water spray; Dry Chemical; Carbon dioxide.
4. Special Fire Fighting Procedures: Wear self-contained breathing apparatus and protective clothing to prevent contact with skin and eyes.
5. Unusual Fire and Explosion Hazards: Fire or excessive heat may cause production of hazardous decomposition products.

IV. Reactivity Data

1. Stability: Stable
2. Incompatibility: Strong oxidizers
3. Hazardous Decomposition Products: As with any other organic material, combustion may produce carbon monoxide. Oxides of nitrogen may also be present.
4. Hazardous Polymerization: Will not occur.

V. Spill and Leak Procedures

1. Sweep material onto paper and place in fiber carton.
2. Package appropriately for safe feed to an incinerator or dissolve in compatible waste solvents prior to incineration.
3. Dispose of in an approved incinerator equipped with afterburner and scrubber or contract with licensed chemical waste disposal service.
4. Discharge treatment or disposal may be subject to federal, state, or local laws.
5. Wear appropriate personal protective equipment.

VI. Special Storage and Handling Precautions

1. A. High exposure to MDA can occur when transferring the substance from one container to another. Such operations should be well

ventilated and good work practices must be established to avoid spills.

B. Pure MDA is a solid with a low vapor pressure. Grinding or heating operations increase the potential for exposure.

C. Store away from oxidizing materials.

D. Employers shall advise employees of all areas and operations where exposure to MDA could occur.

VII. Housekeeping and Hygiene Facilities

A. The workplace should be kept clean, orderly, and in a sanitary condition.

The employer should institute a leak and spill detection program for operations involving MDA in order to detect sources of fugitive MDA emissions.

B. Adequate washing facilities with hot and cold water are to be provided and maintained in a sanitary condition. Suitable cleansing agents should also be provided to assure the effective removal of MDA from the skin.

VIII. Common Operations

Common operations in which exposure to MDA is likely to occur include the following: Manufacture of MDA; Manufacture of Methylene diisocyanate; Curing agent for epoxy resin structures; Wire coating operations; and filament winding.

Appendix C to Section 1910.1050—Medical Surveillance Guidelines for MDA**I. Route of Entry**

Inhalation; skin absorption; ingestion. MDA can be inhaled, absorbed through the skin, or ingested.

II. Toxicology

MDA is a suspect carcinogen in humans. There are several reports of liver disease in humans and animals resulting from acute exposure to MDA. A well documented case of an acute cardiomyopathy secondary to exposure to MDA is on record. Numerous human cases of hepatitis secondary to MDA are known. Upon direct contact MDA may also cause damage to the eyes. Dermatitis and skin sensitization have been observed. Almost all forms of acute environmental hepatic injury in humans involve the hepatic parenchyma and produce hepatocellular jaundice. This agent produces intrahepatic cholestasis. The clinical picture consists of cholestatic jaundice, preceded or accompanied by abdominal pain, fever, and chills. Onset in about 60% of all observed cases is abrupt with severe abdominal pain. In about 30% of observed cases, the illness presented and evolved more slowly and less dramatically, with only slight abdominal pain. In about 10% of the cases only jaundice was evident. The cholestatic nature of the jaundice is evident in the prominence of itching, the histologic predominance of bile stasis, and portal inflammatory infiltration, accompanied by only slight parenchymal injury in most cases, and by the moderately elevated transaminase values. Acute, high doses, however, have been known to cause hepatocellular damage resulting in elevated SGPT, SGOT, alkaline phosphatase and bilirubin.

Absorption through the skin is rapid. MDA is metabolized and excreted over a 48-hour period. Direct contact may be irritating to the

skin, causing dermatitis. Also MDA which is deposited on the skin is not thoroughly removed through washing.

MDA may cause bladder cancer in humans. Animal data supporting this assumption is not available nor is conclusive human data. However, human data collected on workers at a helicopter manufacturing facility where MDA is used suggests a higher incidence of bladder cancer among exposed workers.

III. Signs and Symptoms

Skin may become yellow from contact with MDA.

Repeated or prolonged contact with MDA may result in recurring dermatitis (red-itchy, cracked skin) and eye irritation. Inhalation, ingestion or absorption through the skin at high concentrations may result in hepatitis, causing symptoms such as fever and chills, nausea and vomiting, dark urine, anorexia, rash, right upper quadrant pain and jaundice. Corneal burns may occur when MDA is splashed in the eyes.

IV. Treatment of Acute Toxic Effects/Emergency Situation

If MDA gets into the eyes, immediately wash eyes with large amounts of water. If MDA is splashed on the skin, immediately wash contaminated skin with mild soap or detergent. Employee should be removed from exposure and given proper medical treatment. Medical tests required under the emergency section of the medical surveillance section (M)(4) must be conducted.

If the chemical is swallowed do not induce vomiting but remove by gastric lavage.

Appendix D to Section 1910.1050—Sampling and Analytical Methods for MDA Monitoring and Measurement Procedures

Measurements taken for the purpose of determining employee exposure to MDA are best taken so that the representative average 8-hour exposure may be determined from a single 8-hour sample or two (2) 4-hour samples. Short-time interval samples (or grab samples) may also be used to determine average exposure level if a minimum of five measurements are taken in a random manner over the 8-hour work shift. Random sampling means that any portion of the work shift has the same chance of being sampled as any other. The arithmetic average of all such random samples taken on one work shift is an estimate of an employee's average level of exposure for that work shift. Air samples should be taken in the employee's breathing zone (air that would most nearly represent that inhaled by the employee).

There are a number of methods available for monitoring employee exposures to MDA. The method OSHA currently uses is included below.

The employer, however, has the obligation of selecting any monitoring method which meets the accuracy and precision requirements of the standard under his unique field conditions. The standard requires that the method of monitoring must have an accuracy, to a 95 percent confidence level, of not less than plus or minus 25 percent for the select PEL.

OSHA Methodology

Sampling Procedure

Apparatus

Samples are collected by use of a personal sampling pump that can be calibrated within $\pm 5\%$ of the recommended flow rate with the sampling filter in line.

Samples are collected on 37 mm Gelman type A/E glass fiber filters treated with sulfuric acid. The filters are prepared by soaking each filter with 0.5 mL of 0.26N H_2SO_4 . (0.26N H_2SO_4 can be prepared by diluting 1.5 mL of 36N H_2SO_4 to 200 mL with deionized water.) The filters are dried in an oven at 100 degrees C for one hour and then assembled into two-piece 37 mm polystyrene cassettes with backup pads. The cassettes are sealed with shrink bands and the ends are plugged with plastic plugs.

After sampling, the filters are carefully removed from the cassettes and individually transferred to small vials containing approximately 2 mL deionized water. The vials must be tightly sealed. The water can be added before or after the filters are transferred. The vials must be sealable and capable of holding at least 7 mL of liquid. Small glass scintillation vials with caps containing Teflon liners are recommended.

Reagents

Deionized water is needed for addition to the vials.

Sampling Technique

Immediately before sampling, remove the plastic plugs from the filter cassettes.

Attach the cassette to the sampling pump with flexible tubing and place the cassette in the employee's breathing zone.

After sampling, seal the cassettes with plastic plugs until the filters are transferred to the vials containing deionized water.

At some convenient time within 10 hours of sampling, transfer the sample filters to vials. Seal the small vials lengthwise.

Submit at least one blank filter with each sample set. Blanks should be handled in the same manner as samples, but no air is drawn through them.

Record sample volumes (in L of air) for each sample, along with any potential interferences.

Retention Efficiency

A retention efficiency study was performed by drawing 100 L of air (80% relative humidity) at 1 L/min through sample filters that had been spiked with 0.814 μ g MDA. Instead of using backup pads, blank acid-treated filters were used as backups in each cassette. Upon analysis, the top filters were found to have an average of 91.8% of the spiked amount. There was no MDA found on the bottom filters, so the amount lost was probably due to the slight instability of the MDA salt.

Extraction Efficiency

The average extraction efficiency for six filters spiked at the target concentration is 99.8%.

The stability of extracted and derivatized samples was verified by reanalyzing the above six samples the next day using fresh standards. The average extraction efficiency for the reanalyzed samples is 98.7%.

Recommended Air Volume and Sampling Rate

The recommended air volume is 100 L.
The recommended sampling rate is 1 L/min.

Interferences (Sampling)

MDI appears to be a positive interference. It was found that when MDI was spiked onto an acid-treated filter, the MDI converted to MDA after air was drawn through it.

Suspected interferences should be reported to the laboratory with submitted samples.

Safety Precautions (Sampling)

Attach the sampling equipment to the employees so that it will not interfere with work performance or safety.

Follow all safety procedures that apply to the work area being sampled.

Analytical Procedure

Apparatus: The following are required for analysis.

A GC equipped with an electron capture detector. For this evaluation a Tracor 222 Gas Chromatograph equipped with a Nickel 63 High Temperature Electron Capture Detector and a Linearizer was used.

A GC column capable of separating the MDA derivative from the solvent and interferences. A 6 ft X 2 mm ID glass column packed with 3% OV-101 coated on 100/120 Gas Chrom Q was used in this evaluation.

A electronic integrator or some other suitable means of measuring peak areas or heights.

Small resealable vials with Teflon-lined caps capable of holding 4 mL.

A dispenser or pipet for toluene capable of delivering 2.0 mL.

Pipets (or repipets with plastic or Teflon tips) capable of delivering 1 mL for the sodium hydroxide and buffer solutions.

A repipet capable of delivering 25 μ L HFAA.

Syringes for preparation of standards and injection of standards and samples into a GC.

Volumetric flasks and pipets to dilute the pure MDA in preparation of standards.

Disposable pipets to transfer the toluene layers after the samples are extracted.

Reagents

0.5 NaOH prepared from reagent grade NaOH.

Toluene, pesticide grade. Burdick and Jackson distilled in glass toluene was used.

Heptafluorobutyric acid anhydride (HFAA). HFAA from Pierce Chemical Company was used.

pH 7.0 phosphate buffer, prepared from 136 g potassium dihydrogen phosphate and 1 L deionized water. The pH is adjusted to 7.0 with saturated sodium hydroxide solution.

4,4'-Methylenedianiline (MDA), reagent grade.

Standard Preparation

Concentrated stock standards are prepared by diluting pure MDA with toluene.

Analytical standards are prepared by injecting μ L amounts of diluted stock standards into vials that contain 2.0 mL toluene.

25 μ L HFAA are added to each vial and the vials are capped and shaken for 10 seconds.

After 10 min, 1 mL of buffer is added to each vial.

The vials are recapped and shaken for 10 seconds.

After allowing the layers to separate, aliquots of the toluene (upper) layers are removed with a syringe and analyzed by GC.

Analytical standard concentrations should bracket sample concentrations. Thus, if samples fall out of the range of prepared standards, additional standards must be prepared to ascertain detector response.

Sample Preparation

The sample filters are received in vials containing deionized water.

1 mL of 0.5N NaOH and 2.0 mL toluene are added to each vial.

The vials are recapped and shaken for 10 min.

After allowing the layers to separate, approximately 1 mL aliquots of the toluene (upper) layers are transferred to separate vials with clean disposable pipets.

The toluene layers are treated and analyzed.

Analysis

GC conditions

Zone temperatures:

Column—220 degrees C

Injector—235 degrees C

Detector—335 degrees C

Gas flows, Ar/CH₄ Column—28 mL/min (95/5) Purge—40 mL/min

Injection volume: 5.0 μ L

Column: 6 ft X 1/8 in ID glass, 3% OV-101 on 100/120 Gas Chrom Q

Retention time of MDA derivative: 3.5 min

Chromatogram

Peak areas or heights are measured by an integrator or other suitable means.

A calibration curve is constructed by plotting response (peak areas or heights) of standard injections versus μ g of MDA per sample. Sample concentrations must be bracketed by standards.

Interferences (Analytical)

Any compound that gives an electron capture detector response and has the same general retention time as the HFAA derivative of MDA is a potential interference. Suspected interferences reported to the laboratory with submitted samples by the industrial hygienist must be considered before samples are derivatized.

GC parameters may be changed to possibly circumvent interferences.

Retention time on a single column is not considered proof of chemical identity. Analyte identity should be confirmed by GC/MS if possible.

Calculations

The analyte concentration for samples is obtained from the calibration curve in terms of μ g MDA per sample. The extraction efficiency is 100%. If any MDA is found on the blank, that amount is subtracted from the sample amounts. The air concentrations are calculated using the following formulae.

$\mu\text{g}/\text{m}^3 = (\mu\text{g MDA per sample}) (1000) / (\text{L of air sampled})$

ppb = $(\mu\text{g}/\text{m}^3) (24.46) / (198.3) = (\mu\text{g}/\text{m}^3) (0.1233)$ where 24.46 is the molar volume at 25 degrees C and 760 mm Hg

Safety Precautions (Analytical)

Avoid skin contact and inhalation of all chemicals.

Restrict the use of all chemicals to a fume hood if possible.

Wear safety glasses and a lab coat at all times while in the lab area.

Appendix E to Section 1910.1050—Qualitative and Quantitative Fit Testing Procedures

Qualitative Fit Test Protocols

I. Isoamyl Acetate (banana oil) Protocol

A. Odor threshold screening.

1. Three 1-liter glass jars with metal lids (e.g. Mason or Bell jars) are required.

2. Odor-free water (e.g. distilled or spring water) at approximately 25° C shall be used for the solutions.

3. The isoamyl acetate (IAA) (also known as isopentyl acetate) stock solution is prepared by adding 1 cc of pure IAA to 800 cc of odor free water in a 1-liter jar and shaking for 30 seconds. This solution shall be prepared new at least weekly.

4. The screening test shall be conducted in a room separate from the room used for actual fit testing. The two rooms shall be well ventilated so that circulation of the test solution does not occur and cross contaminate the testing different sites.

5. The odor test solution is prepared in a second jar by placing 0.4 cc of the stock solution into 500 cc of odor free water using a clean dropper or pipette. Shake for 30 seconds and allow to stand for two to three minutes so that the IAA concentration above the liquid may reach equilibrium. This solution may be used for only one day.

6. A test blank is prepared in a third jar by adding 500 cc of odor free water.

7. The odor test and test blank jars shall be labelled 1 and 2 for jar identification.

8. The following instructions shall be typed on a card and placed on the table in front of the two test jars (i.e. 1 and 2): "The purpose of this test is to determine if you can smell banana oil at a low concentration. The two bottles in front of you contain water. One of these bottles also contains a small amount of banana oil. Be sure the covers are on tight, then shake each bottle for two seconds. Unscrew the lid of each bottle, one at a time, and sniff at the mouth of the bottle. Indicate to the test conductor which bottle contains banana oil."

9. The mixtures used in the IAA odor detection test shall be prepared in an area separate from where the test is performed, in order to prevent olfactory fatigue in the subject.

10. If the test subject is unable to correctly identify the jar containing the odor test solution, the IAA qualitative fit test may not be used.

11. If the test subject correctly identifies the jar containing the odor test solution, the test subject may proceed to respirator selection and fit testing.

B. Respirator Selection.

1. The test subject shall be allowed to pick the most comfortable respirator from a selection including respirators of various

sizes from different manufacturers. The selection shall include at least three sizes of elastomeric half facepieces, from at least two manufacturers.

2. The selection process shall be conducted in a room separate from the fit-test chamber to prevent odor fatigue. Prior to the selection process, the test subject shall be shown how to put on a respirator, how it should be positioned on the face, how to set strap tension and how to determine a "comfortable" respirator. A mirror shall be available to assist the subject in evaluating the fit and positioning of the respirator. This instruction may not constitute the subject's formal training on respirator use, as it is only a review.

3. The test subject should understand that the employee is being asked to select the respirator which provides the most comfortable fit.

4. The test subject holds each facepiece up to the face and eliminates those which obviously do not give a comfortable fit. Normally, selection will begin with a half-mask and if a comfortable fit cannot be found, the subject will be asked to test the full facepiece respirators. (A small percentage of users will not be able to wear any half-mask.)

5. The more comfortable facepieces are noted; the most comfortable mask is donned and worn at least five minutes to assess comfort. All donning and adjustments of the facepiece shall be performed by the test subject without assistance from the test conductor or other person. Assistance in assessing comfort can be given by discussing the points in #6 below. If the test subject is not familiar with using a particular respirator, the test subject shall be directed to don the mask several times and to adjust the straps each time to become adept at setting proper tension on the straps.

6. Assessment of comfort shall include reviewing the following points with the test subject and allowing the test subject adequate time to determine the comfort of the respirator after donning:

- Positioning of mask on nose.
 - Room for eye protection.
 - Room to talk.
 - Positioning mask on face and cheeks.
7. The following criteria shall be used to help determine the adequacy of the respirator fit:

- Chin properly placed.
- Strap tension.
- Fit across nose bridge.
- Distance from nose to chin.
- Tendency to slip.
- Self-observation in mirror.

8. The test subject shall perform the conventional negative or positive-pressure fit checks (e.g., see ANSI Z88.2-1980A7). Before beginning the negative- or positive-pressure test, the subject shall be told to "seat" the mask by rapidly moving the head from side-to-side and up and down, while taking a few deep breaths.

9. The test subject is now ready for fit testing.

10. After passing the fit test, the test subject shall be questioned again regarding the comfort of the respirator. If the respirator has become uncomfortable, another model of respirator shall be tried.

11. The employee shall be given the opportunity to select a different facepiece and to be retested if the chosen facepiece becomes increasingly uncomfortable at any time.

C. Fit Test.

1. The fit test chamber shall be similar to a clear 55 gallon drum liner suspended inverted over a 2-foot diameter frame, so that the top of chamber is about 6 inches above the test subject's head. The inside top center of the chamber shall have a small hook attached.

2. Each respirator used for the fitting and fit testing shall be equipped with organic vapor cartridges or offer protection against organic vapors. The cartridges or canisters shall be replaced as necessary to maintain the effectiveness of the respirator.

3. After selecting, donning, and properly adjusting a respirator, the test subject shall wear it to the fit testing room. This room shall be separate from the room used for odor threshold screening and respirator selection, and shall be well ventilated, as by an exhaust fan or lab hood, to prevent general room contamination.

4. A copy of the following test exercises and Rainbow Passage shall be taped to the inside of the test chamber:

Test Exercises

- i. Breathe normally.
- ii. Breathe deeply. Be certain breaths are deep and regular.
- iii. Turn head all the way from one side to the other. Inhale on each side. Be certain movement is complete. Do not bump the respirator against the shoulders.
- iv. Nod head up-and-down. Inhale when head is in the full up position (looking toward ceiling). Be certain motions are complete and made about every second. Do not bump the respirator on the chest.
- v. Talking. Talk aloud and slowly for several minutes. The following paragraph is called the Rainbow Passage. Reading it aloud will result in a wide range of facial movements, and thus be useful to satisfy this requirement. Alternative passages which serve the same purpose may also be used.
- vi. Jog in place.
- vii. Breathe normally.

Rainbow Passage

When the sunlight strikes raindrops in the air, they act like a prism and form a rainbow. The rainbow is a division of white light into many beautiful colors. These take the shape of a long round arch, with its path high above, and its two ends apparently beyond the horizon. There is, according to legend, a boiling pot of gold at one end. People look, but no one ever finds it. When a man looks for something beyond reach, his friends say he is looking for the pot of gold at the end of the rainbow.

5. Each test subject shall wear the respirator for at least 10 minutes before starting the fit test.

6. Upon entering the test chamber, the test subject shall be given a 6 inch by 5 inch piece of paper towel or other porous absorbent single ply material, folded in half and wetted with three-quarters of one cc of pure IAA.

The test subject shall hang the wet towel on the hook at the top of the chamber.

7. Allow two minutes for the IAA test concentration to be reached before starting the fit-test exercises.

8. Each exercise described in #4 above shall be performed for at least one minute.

9. If at any time during the test, the subject detects the banana-like odor of IAA, the test has failed. The subject shall quickly exit from the test chamber and leave the test area to avoid olfactory fatigue.

10. If the test is failed, the subject shall return to the selection room and remove the respirator, repeat the odor sensitivity test, select and put on another respirator, return to the test chamber, and again begin the procedure described in the c(4) through c(8) above. The process continues until a respirator that fits well has been found. Should the odor sensitivity test be failed, the subject shall wait about 5 minutes before retesting. Odor sensitivity will usually have returned by this time.

11. If a person cannot pass the fit test described above wearing a half-mask respirator from the available selection, full facepiece models must be used.

12. When a respirator is found that passes the test, the subject must break the face seal and take a breath before exiting the chamber. This is to assure that the reason the test subject is not smelling the IAA is the good fit of the respirator facepiece seal and not olfactory fatigue.

13. When the test subject leaves the chamber, the subject shall remove the saturated towel and return it to the person conducting the test. To keep the area from becoming contaminated, the used towels shall be kept in a self-sealing bag so there is no significant IAA concentration buildup in the test chamber during subsequent tests.

14. Persons who have successfully passed this fit test with a half-mask respirator may be assigned the use of the test respirator in atmospheres with up to 10 times the PEL. In atmospheres greater than 10 times, and less than 50 times the PEL (up to 50 ppm), the subject must pass the IAA test using a full face negative pressure respirator. (The concentration of the IAA inside the test chamber must be increased by five times for QLFT of the full facepiece.)

15. The test shall not be conducted if there is any hair growth between the skin and the facepiece sealing surface.

16. If hair growth or apparel interfere with a satisfactory fit, then they shall be altered or removed so as to eliminate interference and allow a satisfactory fit. If a satisfactory fit is still not attained, the test subject must use a positive-pressure respirator such as a powered air-purifying respirator, supplied air respirator, or self-contained breathing apparatus.

17. If a test subject exhibits difficulty in breathing during the tests, she or he shall be referred to a physician trained in respiratory diseases or pulmonary medicine to determine whether the test subject can wear a respirator while performing her or his duties.

18. Qualitative fit testing shall be repeated at least every 12 months.

19. In addition, because the sealing of the respirator may be affected, qualitative fit

testing shall be repeated immediately when the test subject has a:

- (1) Weight change of 20 pounds or more;
- (2) Significant facial scarring in the area of the facepiece seal;
- (3) Significant dental changes; i.e., multiple extractions without prosthesis, or acquiring dentures;
- (4) Reconstructive or cosmetic surgery; or
- (5) Any other condition that may interfere with facepiece sealing.

D. Recordkeeping.
A summary of all test results shall be maintained by the employer for 3 years. The summary shall include:

- (1) Name of test subject.
- (2) Date of testing.
- (3) Name of the test conductor.
- (4) Respirators selected (indicate manufacturer, model, size and approval number).
- (5) Testing agent.

II. Saccharin Solution Aerosol Protocol

A. Respirator Selection.

Respirators shall be selected as described in section IB (respirator selection) above, except that each respirator shall be equipped with a particulate filter.

B. Taste Threshold Screening.

1. An enclosure placed over the head and shoulders shall be used for threshold screening (to determine if the individual can taste saccharin) and for fit testing. The enclosure shall be approximately 12 inches in diameter by 14 inches tall with at least the front clear to allow free movement of the head when a respirator is worn.

2. The test enclosure shall have a three-quarter inch hole in front of the test subject's nose and mouth area to accommodate the nebulizer nozzle.

3. The entire screening and testing procedure shall be explained to the test subject prior to conducting the screening test.

4. During the threshold screening test, the test subject shall don the test enclosure and breathe with open mouth with tongue extended.

5. Using a DeVilbiss Model 40 Inhalation Medication Nebulizer or equivalent, the test conductor shall spray the threshold check solution into the enclosure. This nebulizer shall be clearly marked to distinguish it from the fit test solution nebulizer.

6. The threshold check solution consists of 0.83 grams of sodium saccharin, USP in water. It can be prepared by putting 1 cc of the test solution (see C 7 below) in 100 cc of water.

7. To produce the aerosol, the nebulizer bulb is firmly squeezed so that it collapses completely; then is released and allowed to fully expand.

8. Ten squeezes of the nebulizer bulb are repeated rapidly and then the test subject is asked whether the saccharin can be tasted.

9. If the first response is negative, ten more squeezes of the nebulizer bulb are repeated rapidly and the test subject is again asked whether the saccharin can be tasted.

10. If the second response is negative ten more squeezes are repeated rapidly and the test subject is again asked whether the saccharin can be tasted.

11. The test conductor will take note of the number of squeezes required to elicit a taste response.

12. If the saccharin is not tasted after 30 squeezes (Step 10), the saccharin fit test cannot be performed on the test subject.

13. If a taste response is elicited, the test subject shall be asked to take note of the taste for reference in the fit test.

14. Correct use of the nebulizer means that approximately 1 cc of liquid is used at a time in the nebulizer body.

15. The nebulizer shall be thoroughly rinsed in water, shaken dry, and refilled at least every four hours.

C. Fit Test.

1. The test subject may not eat, drink (except plain water), or chew gum for 15 minutes before the test.

2. The test subject shall don and adjust the respirator without assistance from any person.

3. The fit test uses the same enclosure described in IIB above.

4. Each test subject shall wear the respirator for at least 10 minutes before starting the fit test.

(a) This would be an appropriate time to talk with the test subject; to explain the fit test, the importance of cooperation and; the purpose for the head exercises; or to demonstrate some of the exercises.

(b) The test subject shall perform the conventional negative or positive pressure fit tests (See ANSI Z88.2 1980 A7).

5. The test subject shall enter the enclosure while wearing the respirator selected in section IB above. This respirator shall be properly adjusted and equipped with a particulate filter.

6. A second DeVilbiss Model 40 Inhalation Medication Nebulizer is used to spray the fit test solution into the enclosure. This nebulizer shall be clearly marked to distinguish it from the screening test solution nebulizer.

7. The fit test solution is prepared by adding 83 grams of sodium saccharin to 100 cc of warm water.

8. As before, the test subject shall breathe with mouth open and tongue extended.

9. The nebulizer is inserted into the hole in the front of the enclosure and the fit test solution is sprayed into the enclosure using the same technique as for the taste threshold screening and the same number of squeezes required to elicit a taste response in the screening. (See B8 through B10 above.)

10. After generation of the aerosol read the following instructions to the test subject. The test subject shall perform the exercises for one minute each.

- i. Breathe normally.
- ii. Breathe deeply. Be certain breaths are deep and regular.
- iii. Turn head all the way from one side to the other. Be certain movement is complete. Inhale on each side. Do not bump the respirator against the shoulders.
- iv. Nod head up-and-down. Be certain motions are complete. Inhale when head is in the full up position (when looking toward the ceiling). Do not bump the respirator on the chest.

v. Talk. Talk aloud and slowly. The following paragraph is called the Rainbow Passage. Reading it will result in a wide range of facial movements, and thus be useful to satisfy this requirement.

vi. Jog in place.

vii. Breathe normally.

Rainbow Passage

When the sunlight strikes raindrops in the air, they act like a prism and form a rainbow. The rainbow is a division of white light into many beautiful colors. These take the shape of a long round arch, with its path high above, and its two ends apparently beyond the horizon. There is, according to legend, a boiling pot of gold at one end. People look, but no one ever finds it. When a man looks for something beyond his reach, his friends say he is looking for the pot of gold at the end of the rainbow.

11. At the beginning of each exercise, the aerosol concentration shall be replenished using one-half the number of squeezes as initially described in C9.

12. The test subject shall indicate to the test conductor if at any time during the fit test the taste of saccharin is detected.

13. If the saccharin is detected the fit is deemed unsatisfactory and a different respirator shall be tried.

14. Successful completion of the test protocol shall allow the use of the half mask tested respirator in contaminated atmospheres up to 10 times the PEL of MDA. In other words this protocol may not be used to assign protection factors higher than ten.

15. The test shall not be conducted if there is any hair growth between the skin and the facepiece sealing surface.

16. If hair growth or apparel interfere with a satisfactory fit, then they shall be altered or removed so as to eliminate interference and allow a satisfactory fit. If a satisfactory fit is still not attained, the test subject must use a positive-pressure respirator such as powered air-purifying respirators, supplied air respirator, or self-contained breathing apparatus.

17. If a test subject exhibits difficulty in breathing during the tests, she or he shall be referred to a physician trained in respiratory diseases or pulmonary medicine to determine whether the test subject can wear a respirator while performing her or his duties.

18. Qualitative fit testing shall be repeated at least every 12 months.

19. In addition, because the sealing of the respirator may be affected, qualitative fit testing shall be repeated immediately when the test subject has a:

- (1) Weight change of 20 pounds or more,
- (2) Significant facial scarring in the area of the facepiece seal,
- (3) Significant dental changes; i.e.: multiple extractions without prosthesis, or acquiring dentures,
- (4) Reconstructive or cosmetic surgery, or
- (5) Any other condition that may interfere with facepiece sealing.

D. Recordkeeping.

A summary of all test results shall be maintained by the employer for 3 years. The summary shall include:

- (1) Name of test subject.
- (2) Date of testing.

(3) Name of test conductor.

(4) Respirators selected (indicate manufacturer, model, size and approval number).

(5) Testing agent.

III. Irritant Fume Protocol

A. Respirator selection.

Respirators shall be selected as described in section IB above, except that each respirator shall be equipped with a combination of high-efficiency and acid-gas cartridges.

B. Fit Test.

1. The test subject shall be allowed to smell a weak concentration of the irritant smoke to familiarize the subject with the characteristic odor.

2. The test subject shall properly don the respirator selected as above, and wear it for at least 10 minutes before starting the fit test.

3. The test conductor shall review this protocol with the test subject before testing.

4. The test subject shall perform the conventional positive pressure and negative pressure fit checks (see ANSI Z88.2 1980). Failure of either check shall be cause to select an alternate respirator.

5. Break both ends of a ventilation smoke tube containing stannic oxychloride, such as the MSA part #5645, or equivalent. Attach a short length of tubing to one end of the smoke tube. Attach the other end of the smoke tube to a low pressure air pump set to deliver 200 milliliters per minute.

6. Advise the test subject that the smoke can be irritating to the eyes and instruct the subject to keep the eyes closed while the test is performed.

7. The test conductor shall direct the stream of irritant smoke from the tube towards the facepiece area of the test subject. The person conducting the test shall begin with the tube at least 12 inches from the facepiece and gradually move to within one inch, moving around the whole perimeter of the mask.

8. The test subject shall be instructed to do the following exercises while the respirator is being challenged by the smoke. Each exercise shall be performed for one minute.

- i. Breathe normally.
- ii. Breathe deeply. Be certain breaths are deep and regular.
- iii. Turn head all the way from one side to the other. Be certain movement is complete. Inhale on each side. Do not bump the respirator against the shoulders.
- iv. Nod head up-and-down. Be certain motions are complete and made every second. Inhale when head is in the full up position (looking toward ceiling). Do not bump the respirator against the chest.

v. Talking. Talk aloud and slowly for several minutes. The following paragraph is called the Rainbow Passage. Reading it will result in a wide range of facial movements, and thus be useful to satisfy this requirement. Alternative passages which serve the same purpose may also be used.

Rainbow Passage

When the sunlight strikes raindrops in the air, they act like a prism and form a rainbow. The rainbow is a division of white light into many beautiful colors. These take the shape

of a long round arch, with its path high above, and its two ends apparently beyond the horizon. There is, according to legend, a boiling pot of gold at one end. People look, but no one ever finds it. When a man looks for something beyond his reach, his friends say he is looking for the pot of gold at the end of the rainbow.

vi. Jogging in Place.

vii. Breathe normally.

9. The test subject shall indicate to the test conductor if the irritant smoke is detected. If smoke is detected, the test conductor shall stop the test. In this case, the tested respirator is rejected and another respirator shall be selected.

10. Each test subject passing the smoke test (i.e. without detecting the smoke) shall be given a sensitivity check of smoke from the same tube to determine if the test subject reacts to the smoke. Failure to evoke a response shall void the fit test.

11. Steps B4, B9, B10 of this fit test protocol shall be performed in a location with exhaust ventilation sufficient to prevent general contamination of the testing area by the test agents

12. Respirators successfully tested by the protocol may be used in contaminated atmospheres up to ten times the PEL of MDA.

13. The test shall not be conducted if there is any hair growth between the skin and the facepiece sealing surface.

14. If hair growth or apparel interfere with a satisfactory fit, then they shall be altered or removed so as to eliminate interference and allow a satisfactory fit. If a satisfactory fit is still not attained, the test subject must use a positive-pressure respirator such as powered air-purifying respirators, supplied air respirator, or self-contained breathing apparatus.

15. If a test subject exhibits difficulty in breathing during the tests, she or he shall be referred to a physician trained in respiratory diseases or pulmonary medicine to determine whether the test subject can wear a respirator while performing her or his duties.

16. Qualitative fit testing shall be repeated at least every 12 months.

17. In addition, because the sealing of the respirator may be affected, qualitative fit testing shall be repeated immediately when the test subject has a:

- (1) Weight change of 20 pounds or more,
- (2) Significant facial scarring in the area of the facepiece seal,
- (3) Significant dental changes; i.e.: multiple extractions without prosthesis, or acquiring dentures,
- (4) Reconstructive or cosmetic surgery, or
- (5) Any other condition that may interfere with facepiece sealing.

C. Recordkeeping.

A summary of all test results shall be maintained by the employer for 3 years. The summary shall include:

- (1) Name of test subject
- (2) Date of testing.
- (3) Name of test conductor.
- (4) Respirators selected (indicate manufacturer, model, size and approval number).
- (5) Testing agent.

Quantitative Fit Test Procedures**1. General.**

a. The method applies to the negative-pressure nonpowered air-purifying respirators only.

b. The employer shall assign an individual (with help as needed) who shall assume the full responsibility for implementing the respirator quantitative fit test program.

2. Definition.

a. "Quantitative Fit Test" means the measurement of the effectiveness of a respirator seal in excluding the ambient atmosphere. The test is performed by dividing the measured concentration of challenge agent in a test chamber by the measured concentration of the challenge agent inside the respirator facepiece when the normal air purifying element has been replaced by an essentially perfect purifying element.

b. "Challenge Agent" means the air contaminant introduced into a test chamber so that its concentration inside and outside the respirator may be compared.

c. "Test Subject" means the person wearing the respirator for quantitative fit testing.

d. "Normal Standing Position" means standing erect and straight with arms down along the sides and looking straight ahead.

e. "Fit Factor" means the ratio of challenge agent concentration outside with respect to the inside of a respirator inlet covering (facepiece or enclosure).

3. Apparatus.

a. **Instrumentation.** Corn oil, sodium chloride or other appropriate aerosol generation, dilution, and measurement systems shall be used for quantitative fit test.

b. **Test chamber.** The test chamber shall be large enough to permit all test subjects to freely perform all required exercises without distributing the challenge agent concentration or the measurement apparatus. The test chamber shall be equipped and constructed so that the challenge agent is effectively isolated from the ambient air yet uniform in concentration throughout the chamber.

c. When testing air-purifying respirators, the normal filter or cartridge element shall be replaced with a high-efficiency particulate filter supplied by the same manufacturer.

d. The sampling instrument shall be selected so that a strip chart record may be made of the test showing the rise and fall of challenge agent concentration with each inspiration and expiration at fit factors of at least 2,000.

e. The combination of substitute air-purifying elements (if any), challenge agent, and challenge agent concentration in the test chamber shall be such that the test subject is not exposed in excess of PEL to the challenge agent at any time during the testing process.

f. The sampling port on the test specimen respirator shall be placed and constructed so that there is no detectable leak around the port, a free air flow is allowed into the sampling line at all times and so there is no interference with the fit or performance of the respirator.

g. The test chamber and test set-up shall permit the person administering the test to observe one test subject inside the chamber during the test.

h. The equipment generating the challenge atmosphere shall maintain the concentration

of challenge agent constant within a 10 percent variation for the duration of the test.

i. The time lag (interval between an event and its being recorded on the strip chart) of the instrumentation may not exceed 2 seconds.

j. The tubing for the test chamber atmosphere and for the respirator sampling port shall be the same diameter, length and material. It shall be kept as short as possible. The smallest diameter tubing recommended by the manufacturer shall be used.

k. The exhaust flow from the test chamber shall pass through a high-efficiency filter before release to the room.

l. When sodium chloride aerosol is used, the relative humidity inside the test chamber shall not exceed 50 percent.

4. Procedural Requirements.

a. The fitting of half-mask respirators should be started with those having multiple sizes and a variety of interchangeable cartridges and canisters such as the MSA Comfr II-M, Norton M, Survivair MA-O M or Scott-M. Use either of the tests outlined below to assure that the facepiece is properly adjusted.

(1) **Positive pressure test.** With the exhaust port(s) blocked the negative pressure of slight inhalation should remain constant for several seconds.

(2) **Negative pressure test.** With the intake port(s) blocked the negative pressure slight inhalation should remain constant for several seconds.

b. After a facepiece is adjusted, the test subject shall wear the facepiece for at least 5 minutes before conducting a qualitative test by using either of the methods described below and using the exercise regime described in 5.a., b., c., d., and e.

(1) **Isoamyl acetate test.** When using organic vapor cartridges, the test subject who can smell the odor should be unable to detect the odor of isoamyl acetate squirted into the air near the most vulnerable portions of the facepiece seal. In a location which is separated from the test area, the test subject shall be instructed to close her/his eyes during the test period. A combination cartridge or canister with organic vapor and high-efficiency filters shall be used when available for the particular mask being tested. The test subject shall be given an opportunity to smell the odor of isoamyl acetate before the test is conducted.

(2) **Irritant fume test.** When using high-efficiency filters, the test subject should be unable to detect the odor of irritant fume (stannic chloride or titanium tetrachloride ventilation smoke tubes) squirted into the air near the most vulnerable portions of the facepiece seal. The test subject shall be instructed to close her/his eyes during the test period.

c. The test subject may enter the quantitative testing chamber only if she or he has obtained a satisfactory fit by as stated in 4.b. of this Appendix.

d. Before the subject enters the test chamber, a reasonably stable challenge agent concentration shall be measured in the test chamber.

e. Immediately after the subject enters the test chamber, the challenge agent concentration inside the respirator shall be

measured to ensure that the peak penetration does not exceed 5 percent for a half-mask and 1 percent for a full facepiece.

f. A stable challenge agent concentration shall be obtained prior to the actual start of testing.

g. Respirator restraining straps may not be overtightened for testing. The straps shall be adjusted by the wearer to give a reasonably comfortable fit typical of normal use.

5. **Exercise Regime.** Prior to entering the test chamber, the test subject shall be given complete instructions as to her/his part in the test procedures. The test subject shall perform the following exercises, in the order given, for each independent test.

a. **Normal Breathing (NB).** In the normal standing position, without talking, the subject shall breathe normally for at least one minute.

b. **Deep Breathing (DB).** In the normal standing position the subject shall do deep breathing for at least one minute pausing so as not to hyperventilate.

c. **Turning head side to side (SS).** Standing in place the subject shall slowly turn his head from side between the extreme positions to each side. The head shall be held at each extreme position for at least 5 seconds. Perform for at least five complete cycles.

d. **Moving head up and down (UD).** Standing in place, the subject shall slowly move his head up and down between the extreme position straight up and the extreme position straight down. The head shall be held at each extreme position for at least 5 seconds. Perform for at least five complete cycles.

e. **Reading (R).** The subject shall read out slowly and loud so as to be heard clearly by the test conductor or monitor. The test subject shall read the "rainbow passage" at the end of this section.

f. **Grimace (G).** The test subject shall grimace, smile, frown, and generally contort the face using the facial muscles. Continue for at least 15 seconds.

g. **Bend over and touch toes (B).** The test subject shall bend at the waist and touch toes and return to upright position. Repeat for at least one minute.

h. **Jogging in place (J).** The test subject shall perform jog in place for at least one minute.

i. **Normal Breathing (NB).** In the normal standing position, without talking, the subject shall breathe normally for at least one minute.

Rainbow Passage

When the sunlight strikes raindrops in the air, they act like a prism and form a rainbow. The rainbow is a division of white light into many beautiful colors. These take the shape of a long round arch, with its path high above, and its two ends apparently beyond the horizon. There is, according to legend, a boiling pot of gold at one end. People look, but no one ever finds it. When a man looks for something beyond reach, his friends say he is looking for the pot of gold at the end of the rainbow.

6. **Termination of Tests.** The test shall be terminated whenever any single peak penetration exceeds 5 percent for half-masks and 1 percent for full facepieces. The test

subject may be refitted and retested. If two of the three required tests are terminated, the fit shall be deemed inadequate. (See paragraph 4.h.).

7. Calculation of Fit Factors.

a. The fit factor determined by the quantitative fit test equals the average concentration inside the respirator.

b. The average test chamber concentration is the arithmetic average of the test chamber concentration at the beginning and of the end of the test.

c. The average peak concentration of the challenge agent inside the respirator shall be the arithmetic average peak concentrations for each of the nine exercises of the test which are computed as the arithmetic average of the peak concentrations found for each breath during the exercise.

d. The average peak concentration for an exercise may be determined graphically if there is not a great variation in the peak concentrations during a single exercise.

8. Interpretation of Test Results. The fit factor measured by the quantitative fit testing shall be the lowest of the three protection factors resulting from three independent tests.

9. Other Requirements.

a. The test subject shall not be permitted to wear a half-mask or full facepiece if the minimum fit factor of 250 or 1,250, respectively, cannot be obtained. If hair growth or apparel interfere with a satisfactory fit, then they shall be altered or removed so as to eliminate interference and allow a satisfactory fit. If a satisfactory fit is still not attained, the test subject must use a positive-pressure respirator such as powered air-purifying respirators, supplied air respirator, or self-contained breathing apparatus.

b. The test shall not be conducted if there is any hair growth between the skin and the facepiece sealing surface.

c. If a test subject exhibits difficulty in breathing during the tests, she or he shall be referred to a physician to determine whether the test subject can wear a respirator while performing her or his duties.

d. The test subject shall be given the opportunity to wear the assigned respirator for one week. If the respirator does not provide a satisfactory fit during actual use, the test subject may request another QNFT which shall be performed immediately.

e. A respirator fit factor card shall be issued to the subject with the following information:

- (1) Name.
- (2) Date of fit test.

(3) Protection factors obtained through each manufacturer, model and approval number of respirator tested.

(4) Name and signature of the person that conducted the test.

f. Filters used for qualitative or quantitative fit testing shall be replaced weekly, whenever increased breathing resistance is encountered, or when the test agent has altered the integrity of the filter media.

Organic vapor cartridges/canisters shall be replaced daily or sooner if there is any indication of breakthrough by the test agent.

10. Retesting. In addition, because the sealing of the respirator may be affected,

quantitative fit testing shall be repeated immediately when the test subject has a:

- (1) Weight change of 20 pounds or more,
- (2) Significant facial scarring in the area of the facepiece seal,

(3) Significant dental changes; i.e.: multiple extractions without prosthesis, or acquiring dentures,

(4) Reconstructive or cosmetic surgery, or

(5) Any other condition that may interfere with facepiece sealing.

11. Recordkeeping.

a. A summary of all test results shall be maintained for three years. The summary shall include:

- (1) Name of test subject.
- (2) Date of testing.
- (3) Name of the test conductor.

(4) Fit factors obtained from every respirator tested (indicate manufacturer, model, size and approval number).

b. A copy of all test data including the strip chart and results shall be kept for at least five years.

Construction Standard

PART 1926—[AMENDED]

4. The authority citation for part 1926 continues to read as follows:

Authority: Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Standards Act) (Construction Safety Act) (40 U.S.C. 333); secs. 4, 6, and 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, and 657); Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736), (or 1-90 (55 FR 9033)) as applicable; and 29 CFR part 1911.

5. By adding a new § 1926.60 to read as follows:

§ 1926.60 Methylene dianiline.

(a) *Scope and application.* (1) This section applies to all construction work as defined in 29 CFR 1910.12(b), in which there is exposure to MDA, including but not limited to the following:

- (i) Construction, alteration, repair, maintenance, or renovation of structures, substrates, or portions thereof, that contain MDA;
- (ii) Installation or the finishing of surfaces with products containing MDA;
- (iii) MDA spill/emergency cleanup at construction sites; and
- (iv) Transportation, disposal, storage, or containment of MDA or products containing MDA on the site or location at which construction activities are performed.

(2) Except as provided in paragraphs (a)(7) and (f)(5) of this section, this section does not apply to the processing, use, and handling of products containing MDA where initial monitoring indicates that the product is not capable of releasing MDA in excess of the action level under the expected conditions of processing, use, and handling which will cause the greatest possible release; and

where no "dermal exposure to MDA" can occur.

(3) Except as provided in paragraph (a)(7) of this section, this section does not apply to the processing, use, and handling of products containing MDA where objective data are reasonably relied upon which demonstrate the product is not capable of releasing MDA under the expected conditions of processing, use, and handling which will cause the greatest possible release; and where no "dermal exposure to MDA" can occur.

(4) Except as provided in paragraph (a)(7) of this section, this section does not apply to the storage, transportation, distribution or sale of MDA in intact containers sealed in such a manner as to contain the MDA dusts, vapors, or liquids, except for the provisions of 29 CFR 1910.1200 and paragraph (e) of this section.

(5) Except as provided in paragraph (a)(7) of this section, this section does not apply to materials in any form which contain less than 0.1% MDA by weight or volume.

(6) Except as provided in paragraph (a)(7) of this section, this section does not apply to "finished articles containing MDA."

(7) Where products containing MDA are exempted under paragraphs (a)(2) through (a)(6) of this section, the employer shall maintain records of the initial monitoring results or objective data supporting that exemption and the basis for the employer's reliance on the data, as provided in the recordkeeping provision of paragraph (o) of this section.

(b) *Definitions.* For the purpose of this section, the following definitions shall apply:

Action level means a concentration of airborne MDA of 5 ppb as an eight (8)-hour time-weighted average.

Assistant Secretary means the Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, or designee.

Authorized person means any person specifically authorized by the employer whose duties require the person to enter a regulated area, or any person entering such an area as a designated representative of employees for the purpose of exercising the right to observe monitoring and measuring procedures under paragraph (p) of this section, or any other person authorized by the Act or regulations issued under the Act.

Container means any barrel, bottle, can, cylinder, drum, reaction vessel, storage tank, commercial packaging or

the like, but does not include piping systems.

Decontamination area means an area outside of but as near as practical to the regulated area, consisting of an equipment storage area, wash area, and clean change area, which is used for the decontamination of workers, materials, and equipment contaminated with MDA.

Dermal exposure to MDA occurs where employees are engaged in the handling, application or use of mixtures or materials containing MDA, with any of the following non-airborne forms of MDA:

(i) Liquid, powdered, granular, or flaked mixtures containing MDA in concentrations greater than 0.1% by weight or volume; and

(ii) Materials other than "finished articles" containing MDA in concentrations greater than 0.1% by weight or volume.

Director means the Director of the National Institute for Occupational Safety and Health, U.S. Department of Health and Human Services, or designee.

Emergency means any occurrence such as, but not limited to, equipment failure, rupture of containers, or failure of control equipment which results in an unexpected and potentially hazardous release of MDA.

Employee exposure means exposure to MDA which would occur if the employee were not using respirators or protective work clothing and equipment.

Finished article containing MDA is defined as a manufactured item:

(i) Which is formed to a specific shape or design during manufacture;

(ii) Which has end use function(s) dependent in whole or part upon its shape or design during end use; and

(iii) Where applicable, is an item which is fully cured by virtue of having been subjected to the conditions (temperature, time) necessary to complete the desired chemical reaction.

Historical monitoring data means monitoring data for construction jobs that meet the following conditions:

(i) The data upon which judgments are based are scientifically sound and were collected using methods that are sufficiently accurate and precise;

(ii) The processes and work practices that were in use when the historical monitoring data were obtained are essentially the same as those to be used during the job for which initial monitoring will not be performed;

(iii) The characteristics of the MDA-containing material being handled when the historical monitoring data were obtained are the same as those on the job for which initial monitoring will not be performed;

(iv) Environmental conditions prevailing when the historical monitoring data were obtained are the same as those on the job for which initial monitoring will not be performed; and

(v) Other data relevant to the operations, materials, processing, or employee exposures covered by the exception are substantially similar. The data must be scientifically sound, the characteristics of the MDA containing material must be similar and the environmental conditions comparable.

4,4' Methyleneedianiline or MDA means the chemical; 4,4'-diaminodiphenylmethane, Chemical Abstract Service Registry number 101-77-9, in the form of a vapor, liquid, or solid. The definition also includes the salts of MDA.

Regulated Areas means areas where airborne concentrations of MDA exceed or can reasonably be expected to exceed, the permissible exposure limits, or where "dermal exposure to MDA" can occur.

STEL means short term exposure limit as determined by any 15-minute sample period.

(c) **Permissible exposure limits.** The employer shall assure that no employee is exposed to an airborne concentration of MDA in excess of ten parts per billion (10 ppb) as an 8-hour time-weighted average and a STEL of one hundred parts per billion (100 ppb).

(d) **Communication among employers.** On multi-employer worksites, an employer performing work involving the application of MDA or materials containing MDA for which establishment of one or more regulated areas is required shall inform other employers on the site of the nature of the employer's work with MDA and of the existence of, and requirements pertaining to, regulated areas.

(e) **Emergency situations—(1) Written plan.** (i) A written plan for emergency situations shall be developed for each construction operation where there is a possibility of an emergency. The plan shall include procedures where the employer identifies emergency escape routes for his employees at each construction site before the construction operation begins. Appropriate portions of the plan shall be implemented in the event of an emergency.

(ii) The plan shall specifically provide that employees engaged in correcting emergency conditions shall be equipped with the appropriate personal protective equipment and clothing as required in paragraphs (i) and (j) of this section until the emergency is abated.

(iii) The plan shall specifically include provisions for alerting and evacuating

affected employees as well as the applicable elements prescribed in 29 CFR 1910.38, "Employee emergency plans and fire prevention plans."

(2) **Alerting employees.** Where there is the possibility of employee exposure to MDA due to an emergency, means shall be developed to promptly alert employees who have the potential to be directly exposed. Affected employees not engaged in correcting emergency conditions shall be evacuated immediately in the event that an emergency occurs. Means shall also be developed for alerting other employees who may be exposed as a result of the emergency.

(f) **Exposure monitoring—(1) General.**

(i) Determinations of employee exposure shall be made from breathing zone air samples that are representative of each employee's exposure to airborne MDA over an eight (8) hour period. Determination of employee exposure to the STEL shall be made from breathing zone air samples collected over a 15 minute sampling period.

(ii) Representative employee exposure shall be determined on the basis of one or more samples representing full shift exposure for each shift for each job classification in each work area where exposure to MDA may occur.

(iii) Where the employer can document that exposure levels are equivalent for similar operations in different work shifts, the employer shall only be required to determine representative employee exposure for that operation during one shift.

(2) **Initial monitoring.** Each employer who has a workplace or work operation covered by this standard shall perform initial monitoring to determine accurately the airborne concentrations of MDA to which employees may be exposed unless:

(i) The employer can demonstrate, on the basis of objective data, that the MDA-containing product or material being handled cannot cause exposures above the standard's action level, even under worst-case release conditions; or

(ii) The employer has historical monitoring or other data demonstrating that exposures on a particular job will be below the action level.

(3) **Periodic monitoring and monitoring frequency.** (i) If the monitoring required by paragraph (f)(2) of this section reveals employee exposure at or above the action level, but at or below the PELs, the employer shall repeat such monitoring for each such employee at least every six (6) months.

(ii) If the monitoring required by paragraph (f)(2) of this section reveals

employee exposure above the PELs, the employer shall repeat such monitoring for each such employee at least every three (3) months.

(iii) Employers who are conducting MDA operations within a regulated area can forego periodic monitoring if the employees are all wearing supplied-air respirators while working in the regulated area.

(iv) The employer may alter the monitoring schedule from every three months to every six months for any employee for whom two consecutive measurements taken at least 7 days apart indicate that the employee exposure has decreased to below the PELs but above the action level.

(4) *Termination of monitoring.* (i) If the initial monitoring required by paragraph (f)(2) of this section reveals employee exposure to be below the action level, the employer may discontinue the monitoring for that employee, except as otherwise required by paragraph (f)(5) of this section.

(ii) If the periodic monitoring required by paragraph (f)(3) of this section reveals that employee exposures, as indicated by at least two consecutive measurements taken at least 7 days apart, are below the action level the employer may discontinue the monitoring for that employee, except as otherwise required by paragraph (f)(5) of this section.

(5) *Additional monitoring.* The employer shall institute the exposure monitoring required under paragraphs (f)(2) and (f)(3) of this section when there has been a change in production process, chemicals present, control equipment, personnel, or work practices which may result in new or additional exposures to MDA, or when the employer has any reason to suspect a change which may result in new or additional exposures.

(6) *Accuracy of monitoring.* Monitoring shall be accurate, to a confidence level of 95 percent, to within plus or minus 25 percent for airborne concentrations of MDA.

(7) *Employee notification of monitoring results.* (i) The employer shall, within 15 working days after the receipt of the results of any monitoring performed under this standard, notify each employee of these results, in writing, either individually or by posting of results in an appropriate location that is accessible to affected employees.

(ii) The written notification required by paragraph (f)(7)(i) of this section shall contain the corrective action being taken by the employer or any other protective measures which have been implemented to reduce the employee

exposure to or below the PELs, wherever the PELs are exceeded.

(8) *Visual monitoring.* The employer shall make routine inspections of employee hands, face and forearms potentially exposed to MDA. Other potential dermal exposures reported by the employee must be referred to the appropriate medical personnel for observation. If the employer determines that the employee has been exposed to MDA the employer shall:

- (i) Determine the source of exposure;
- (ii) Implement protective measures to correct the hazard; and
- (iii) Maintain records of the corrective actions in accordance with paragraph (n) of this section.

(g) *Regulated areas—(1)*

Establishment. (i) *Airborne exposures.* The employer shall establish regulated areas where airborne concentrations of MDA exceed or can reasonably be expected to exceed, the permissible exposure limits.

(ii) *Dermal exposures.* Where employees are subject to "dermal exposure to MDA" the employer shall establish those work areas as regulated areas.

(2) *Demarcation.* Regulated areas shall be demarcated from the rest of the workplace in a manner that minimizes the number of persons potentially exposed.

(3) *Access.* Access to regulated areas shall be limited to authorized persons.

(4) *Personal protective equipment and clothing.* Each person entering a regulated area shall be supplied with, and required to use, the appropriate personal protective clothing and equipment in accordance with paragraphs (i) and (j) of this section.

(5) *Prohibited activities.* The employer shall ensure that employees do not eat, drink, smoke, chew tobacco or gum, or apply cosmetics in regulated areas.

(h) *Methods of compliance—(1)*
Engineering controls and work practices and respirators. (i) The employer shall use one or any combination of the following control methods to achieve compliance with the permissible exposure limits prescribed by paragraph (c) of this section:

- (A) Local exhaust ventilation equipped with HEPA filter dust collection systems;
- (B) General ventilation systems;
- (C) Use of workpractices; or
- (D) Other engineering controls such as isolation and enclosure that the Assistant Secretary can show to be feasible.

(ii) Wherever the feasible engineering controls and work practices "which can be instituted are not sufficient to reduce employee exposure to or below the

PELs, the employer shall use them to reduce employee exposure to the lowest levels achievable by these controls and shall supplement them by the use of respiratory protective devices which comply with the requirements of paragraph (i) of this section.

(2) *Special Provisions.* For workers engaged in spray application methods, respiratory protection must be used in addition to feasible engineering controls and work practices to reduce employee exposure to or below the PELs.

(3) *Prohibitions.* Compressed air shall not be used to remove MDA, unless the compressed air is used in conjunction with an enclosed ventilation system designed to capture the dust cloud created by the compressed air.

(4) *Employee rotation.* The employer shall not use employee rotation as a means of compliance with the exposure limits prescribed in paragraph (c) of this section.

(5) *Compliance program.* (i) The employer shall establish and implement a written program to reduce employee exposure to or below the PELs by means of engineering and work practice controls, as required by paragraph (h)(1) of this section, and by use of respiratory protection where permitted under this section.

(ii) Upon request this written program shall be furnished for examination and copying to the Assistant Secretary, the Director, affected employees and designated employee representatives. The employer shall review and, as necessary, update such plans at least once every 12 months to make certain they reflect the current status of the program.

(i) *Respiratory protection—(1)*
General. The employer shall provide respirators, and ensure that they are used, where required by this section. Respirators shall be used in the following circumstances.

(i) During the time period necessary to install or implement feasible engineering and work practice controls;

(ii) In work operations such as maintenance and repair activities and spray application processes for which engineering and work practice controls are not feasible;

(iii) In work situations where feasible engineering and work practice controls are not yet sufficient to reduce exposure to or below the PELs; and

(iv) In emergencies.

(2) *Respirator selection.* (i) Where respirators are required or allowed under this section, the employer shall select and provide, at no cost to the employee, the appropriate respirator as specified in Table 1, and shall assure

that the employee uses the respirator provided.

(ii) The employer shall select respirators from among those jointly approved by the Mine Safety and Health Administration and the National Institute for Occupational Safety and Health under the provisions of 30 CFR part 11.

(iii) Any employee who cannot wear a negative pressure respirator shall be given the option of wearing a positive pressure respirator or any supplied-air respirator operated in the continuous flow or pressure demand mode.

(3) *Respirator program.* The employer shall institute a respiratory protection program in accordance with 29 CFR 1910.134(b), (d), (e), and (f).

(4) *Respirator use.* (i) Where air-purifying respirators (cartridge or canister) are used, the employer shall replace the air purifying element as needed to maintain the effectiveness of the respirator. The employer shall ensure that each cartridge is dated at the beginning of use.

(ii) Employees who wear respirators shall be allowed to leave the regulated area to readjust the face piece or to wash their faces and to wipe clean the face pieces on their respirators in order to minimize potential skin irritation associated with respirator use.

TABLE 1.—RESPIRATORY PROTECTION FOR MDA

Airborne concentration of MDA or condition of use	Respirator type
a. Less than or equal to 10×PEL	(1) Half-Mask Respirator with HEPA ¹ Cartridge. ²
b. Less than or equal to 50×PEL	(1) Full facepiece respirator with HEPA ¹ Cartridge or Canister. ²
c. Less than or equal to 1000×PEL	(1) Full facepiece powered air-purifying respirator with HEPA ¹ cartridges. ²
d. Greater than 1000×PEL or unknown concentration	(1) Self-contained breathing apparatus with full facepiece in positive pressure mode. (2) Full facepiece positive pressure demand supplied-air respirator with auxiliary self-contained air supply.
e. Escape.....	(1) Any full facepiece air-purifying respirator with HEPA ¹ cartridges; ² (2) Any positive pressure or continuous flow self-contained breathing apparatus with full facepiece or hood.
f. Firefighting.....	(1) Full facepiece self-contained breathing apparatus in positive pressure mode.

Note: Respirators assigned for higher environmental concentrations may be used at lower concentrations.

¹ High Efficiency Particulate in Air filter (HEPA) means a filter that is at least 99.97 percent efficient against mono-dispersed particles of 0.3 micrometers or larger.

² Combination HEPA/Organic Vapor Cartridges shall be used whenever MDA in liquid form or a process requiring heat is used.

(5) *Respirator fit testing.* (i) The employer shall perform and record the results of either quantitative or qualitative fit tests at the time of initial fitting and at least annually thereafter for each employee wearing a negative pressure respirator. The test shall be used to select a respirator facepiece which provides the required protection as prescribed in Table 1.

(ii) The employer shall follow the test protocols outlined in Appendix E of this standard for whichever type of fit testing the employer chooses.

(j) *Protective work clothing and equipment—(1) Provision and use.*

Where employees are subject to dermal exposure to MDA, where liquids containing MDA can be splashed into the eyes, or where airborne concentrations of MDA are in excess of the PEL, the employer shall provide, at no cost to the employee, and ensure that the employee uses, appropriate protective work clothing and equipment which prevent contact with MDA such as, but not limited to:

(i) Aprons, coveralls or other full-body work clothing;

(ii) Gloves, head coverings, and foot coverings; and

(iii) Face shields, chemical goggles; or
(iv) Other appropriate protective equipment which comply with 29 CFR 1910.133.

(2) *Removal and storage.* (i) The employer shall ensure that, at the end of their work shift, employees remove MDA-contaminated protective work clothing and equipment that is not routinely removed throughout the day in change areas provided in accordance with the provisions in paragraph (k) of this section.

(ii) The employer shall ensure that, during their work shift, employees remove all other MDA-contaminated protective work clothing or equipment before leaving a regulated area.

(iii) The employer shall ensure that no employee takes MDA-contaminated work clothing or equipment out of the decontamination areas, except those employees authorized to do so for the purpose of laundering, maintenance, or disposal.

(iv) MDA-contaminated work clothing or equipment shall be placed and stored and transported in sealed, impermeable bags, or other closed impermeable containers.

(v) Containers of MDA-contaminated protective work clothing or equipment

which are to be taken out of decontamination areas or the workplace for cleaning, maintenance, or disposal, shall bear labels warning of the hazards of MDA.

(3) *Cleaning and replacement.* (i) The employer shall provide the employee with clean protective clothing and equipment. The employer shall ensure that protective work clothing or equipment required by this paragraph is cleaned, laundered, repaired, or replaced at intervals appropriate to maintain its effectiveness.

(ii) The employer shall prohibit the removal of MDA from protective work clothing or equipment by blowing, shaking, or any methods which allow MDA to re-enter the workplace.

(iii) The employer shall ensure that laundering of MDA-contaminated clothing shall be done so as to prevent the release of MDA in the workplace.

(iv) Any employer who gives MDA-contaminated clothing to another person for laundering shall inform such person of the requirement to prevent the release of MDA.

(v) The employer shall inform any person who launders or cleans protective clothing or equipment contaminated with MDA of the potentially harmful effects of exposure.

(4) *Visual Examination.* (i) The employer shall ensure that employees' work clothing is examined periodically for rips or tears that may occur during performance of work.

(ii) When rips or tears are detected, the protective equipment or clothing shall be repaired and replaced immediately.

(k) *Hygiene facilities and practices—*

(1) *General.* (i) The employer shall provide decontamination areas for employees required to work in regulated areas or required by paragraph (j)(1) of this section to wear protective clothing. *Exception:* In lieu of the decontamination area requirement specified in paragraph (k)(1)(i) of this section, the employer may permit employees engaged in small scale, short duration operations, to clean their protective clothing or dispose of the protective clothing before such employees leave the area where the work was performed.

(ii) *Change areas.* The employer shall ensure that change areas are equipped with separate storage facilities for protective clothing and street clothing, in accordance with 29 CFR 1910.141(e).

(iii) *Equipment area.* The equipment area shall be supplied with impermeable, labeled bags and containers for the containment and

disposal of contaminated protective clothing and equipment.

(2) *Shower area.* (i) Where feasible, shower facilities shall be provided which comply with 29 CFR 1910.141(d)(3) wherever the possibility of employee exposure to airborne levels of MDA in excess of the permissible exposure limit exists.

(ii) Where dermal exposure to MDA occurs, the employer shall ensure that materials spilled or deposited on the skin are removed as soon as possible by methods which do not facilitate the dermal absorption of MDA.

(3) *Lunch Areas.* (i) Whenever food or beverages are consumed at the worksite and employees are exposed to MDA the employer shall provide clean lunch areas where MDA levels are below the action level and where no dermal exposure to MDA can occur.

(ii) The employer shall ensure that employees wash their hands and faces with soap and water prior to eating, drinking, smoking, or applying cosmetics.

(iii) The employer shall ensure that employees do not enter lunch facilities with contaminated protective work clothing or equipment.

(l) *Communication of hazards to employees—(1) Signs and labels.* (i) The employer shall post and maintain legible signs demarcating regulated areas and entrances or accessways to regulated areas that bear the following legend:

DANGER
MDA
MAY CAUSE CANCER
LIVER TOXIN
AUTHORIZED PERSONNEL ONLY
RESPIRATORS AND PROTECTIVE
CLOTHING MAY BE REQUIRED TO BE
WORN IN THIS AREA

(ii) The employer shall ensure that labels or other appropriate forms of warning are provided for containers of MDA within the workplace. The labels shall comply with the requirements of 29 CFR 1910.1200(f) and shall include one of the following legends:

(A) For pure MDA
DANGER
CONTAINS MDA
MAY CAUSE CANCER
LIVER TOXIN

(B) For mixtures containing MDA
DANGER
CONTAINS MDA
CONTAINS MATERIALS WHICH MAY
CAUSE CANCER
LIVER TOXIN

(2) *Material safety data sheets (MSDS).* Employers shall obtain or develop, and shall provide access to their employees, to a material safety data sheet (MSDS) for MDA.

(3) *Information and training.* (i) The employer shall provide employees with information and training on MDA, in accordance with 29 CFR 1910.1200(h), at the time of initial assignment and at least annually thereafter.

(ii) In addition to the information required under 29 CFR 1910.1200, the employer shall:

(A) Provide an explanation of the contents of this section, including appendices A and B of this section, and indicate to employees where a copy of the standard is available;

(B) Describe the medical surveillance program required under paragraph (n) of this section, and explain the information contained in appendix C of this section; and

(C) Describe the medical removal provision required under paragraph (n) of this section.

(4) *Access to training materials.* (i) The employer shall make readily available to all affected employees, without cost, all written materials relating to the employee training program, including a copy of this regulation.

(ii) The employer shall provide to the Assistant Secretary and the Director, upon request, all information and training materials relating to the employee information and training program.

(m) *Housekeeping.* (1) All surfaces shall be maintained as free as practicable of visible accumulations of MDA.

(2) The employer shall institute a program for detecting MDA leaks, spills, and discharges, including regular visual inspections of operations involving liquid or solid MDA.

(3) All leaks shall be repaired and liquid or dust spills cleaned up promptly.

(4) Surfaces contaminated with MDA may not be cleaned by the use of compressed air.

(5) Shoveling, dry sweeping, and other methods of dry clean-up of MDA may be used where HEPA filtered vacuuming and/or wet cleaning are not feasible or practical.

(6) Waste, scrap, debris, bags, containers, equipment, and clothing contaminated with MDA shall be collected and disposed of in a manner to prevent the re-entry of MDA into the workplace.

(n) *Medical surveillance—(1) General.* (i) The employer shall make available a medical surveillance program for employees exposed to MDA under the following circumstances:

(A) Employees exposed at or above the action level for 30 or more days per year;

(B) Employees who are subject to dermal exposure to MDA for 15 or more days per year;

(C) Employees who have been exposed in an emergency situation;

(D) Employees whom the employer, based on results from compliance with paragraph (f)(8) of this section, has reason to believe are being dermally exposed; and

(E) Employees who show signs or symptoms of MDA exposure.

(ii) The employer shall ensure that all medical examinations and procedures are performed by or under the supervision of a licensed physician at a reasonable time and place, and provided without cost to the employee.

(2) *Initial examinations.* (i) Within 150 days of the effective date of this standard, or before the time of initial assignment, the employer shall provide each employee covered by paragraph (n)(1)(i) of this section with a medical examination including the following elements:

(A) A detailed history which includes:

(1) Past work exposure to MDA or any other toxic substances;

(2) A history of drugs, alcohol, tobacco, and medication routinely taken (duration and quantity); and

(3) A history of dermatitis, chemical skin sensitization, or previous hepatic disease.

(B) A physical examination which includes all routine physical examination parameters, skin examination, and examination for signs of liver disease.

(C) Laboratory tests including:

(1) Liver function tests and (2) Urinalysis.

(D) Additional tests as necessary in the opinion of the physician.

(ii) No initial medical examination is required if adequate records show that the employee has been examined in accordance with the requirements of this section within the previous six months prior to the effective date of this standard or prior to the date of initial assignment.

(3) *Periodic examinations.* (i) The employer shall provide each employee covered by this section with a medical examination at least annually following the initial examination. These periodic examinations shall include at least the following elements:

(A) A brief history regarding any new exposure to potential liver toxins, changes in drug, tobacco, and alcohol intake, and the appearance of physical signs relating to the liver, and the skin;

(B) The appropriate tests and examinations including liver function tests and skin examinations; and

(C) Appropriate additional tests or examinations as deemed necessary by the physician.

(ii) If in the physician's opinion the results of liver function tests indicate an abnormality, the employee shall be removed from further MDA exposure in accordance with paragraph (n)(9) of this section. Repeat liver function tests shall be conducted on advice of the physician.

(4) *Emergency examinations.* If the employer determines that the employee has been exposed to a potentially hazardous amount of MDA in an emergency situation under paragraph (e) of this section, the employer shall provide medical examinations in accordance with paragraphs (n)(3) (i) and (ii) of this section. If the results of liver function testing indicate an abnormality, the employee shall be removed in accordance with paragraph (n)(9) of this section. Repeat liver function tests shall be conducted on the advice of the physician. If the results of the tests are normal, tests must be repeated two to three weeks from the initial testing. If the results of the second set of tests are normal and on the advice of the physician, no additional testing is required.

(5) *Additional examinations.* Where the employee develops signs and symptoms associated with exposure to MDA, the employer shall provide the employee with an additional medical examination including liver function tests. Repeat liver function tests shall be conducted on the advice of the physician. If the results of the tests are normal, tests must be repeated two to three weeks from the initial testing. If the results of the second set of tests are normal and on the advice of the physician, no additional testing is required.

(6) *Multiple physician review mechanism.* (i) If the employer selects the initial physician who conducts any medical examination or consultation provided to an employee under this section, and the employee has signs or symptoms of occupational exposure to MDA (which could include an abnormal liver function test), and the employee disagrees with the opinion of the examining physician, and this opinion could affect the employee's job status, the employee may designate an appropriate and mutually acceptable second physician:

(A) To review any findings, determinations or recommendations of the initial physician; and

(B) To conduct such examinations, consultations, and laboratory tests as the second physician deems necessary to facilitate this review.

(ii) The employer shall promptly notify an employee of the right to seek a second medical opinion after each occasion that an initial physician conducts a medical examination or consultation pursuant to this section. The employer may condition its participation in, and payment for, the multiple physician review mechanism upon the employee doing the following within fifteen (15) days after receipt of the foregoing notification, or receipt of the initial physician's written opinion, whichever is later:

(A) The employee informing the employer that he or she intends to seek a second medical opinion; and

(B) The employee initiating steps to make an appointment with a second physician.

(iii) If the findings, determinations, or recommendations of the second physician differ from those of the initial physician, then the employer and the employee shall assure that efforts are made for the two physicians to resolve any disagreement.

(iv) If the two physicians have been unable to quickly resolve their disagreement, then the employer and the employee through their respective physicians shall designate a third physician:

(A) To review any findings, determinations, or recommendations of the prior physicians; and

(B) To conduct such examinations, consultations, laboratory tests, and discussions with the prior physicians as the third physician deems necessary to resolve the disagreement of the prior physicians.

(v) The employer shall act consistent with the findings, determinations, and recommendations of the second physician, unless the employer and the employee reach a mutually acceptable agreement.

(7) *Information provided to the examining physician.* (i) The employer shall provide the following information to the examining physician:

(A) A copy of this regulation and its appendices;

(B) A description of the affected employee's duties as they relate to the employee's potential exposure to MDA;

(C) The employee's current actual or representative MDA exposure level;

(D) A description of any personal protective equipment used or to be used; and

(E) Information from previous employment related medical examinations of the affected employee.

(ii) The employer shall provide the foregoing information to a second physician under this section upon

request either by the second physician, or by the employee.

(8) *Physician's written opinion.* (i) For each examination under this section, the employer shall obtain, and provide the employee with a copy of, the examining physician's written opinion within 15 days of its receipt. The written opinion shall include the following:

(A) The occupationally pertinent results of the medical examination and tests;

(B) The physician's opinion concerning whether the employee has any detected medical conditions which would place the employee at increased risk of material impairment of health from exposure to MDA;

(C) The physician's recommended limitations upon the employee's exposure to MDA or upon the employee's use of protective clothing or equipment and respirators; and

(D) A statement that the employee has been informed by the physician of the results of the medical examination and any medical conditions resulting from MDA exposure which require further explanation or treatment.

(ii) The written opinion obtained by the employer shall not reveal specific findings or diagnoses unrelated to occupational exposures.

(9) *Medical removal—(i) Temporary medical removal of an employee—(A) Temporary removal resulting from occupational exposure.* The employee shall be removed from work environments in which exposure to MDA is at or above the action level or where dermal exposure to MDA may occur, following an initial examination (paragraph (n)(2) of this section), periodic examinations (paragraph (n)(3) of this section), an emergency situation (paragraph (n)(4) of this section), or an additional examination (paragraph (n)(5) of this section) in the following circumstances:

(1) When the employee exhibits signs and/or symptoms indicative of acute exposure to MDA; or

(2) When the examining physician determines that an employee's abnormal liver function tests are not associated with MDA exposure but that the abnormalities may be exacerbated as a result of occupational exposure to MDA.

(B) *Temporary removal due to a final medical determination.* (1) The employer shall remove an employee from work having an exposure to MDA at or above the action level or where the potential for dermal exposure exists on each occasion that a final medical determination results in a medical finding, determination, or opinion that the employee has a detected medical

condition which places the employee at increased risk of material impairment to health from exposure to MDA.

(2) For the purposes of this section, the phrase "final medical determination" shall mean the outcome of the physician review mechanism used pursuant to the medical surveillance provisions of this section.

(3) Where a final medical determination results in any recommended special protective measures for an employee, or limitations on an employee's exposure to MDA, the employer shall implement and act consistent with the recommendation.

(ii) *Return of the employee to former job status.* (A) The employer shall return an employee to his or her former job status:

(1) When the employee no longer shows signs or symptoms of exposure to MDA, or upon the advice of the physician.

(2) When a subsequent final medical determination results in a medical finding, determination, or opinion that the employee no longer has a detected medical condition which places the employee at increased risk of material impairment to health from exposure to MDA.

(B) For the purposes of this section, the requirement that an employer return an employee to his or her former job status is not intended to expand upon or restrict any rights an employee has or would have had, absent temporary medical removal, to a specific job classification or position under the terms of a collective bargaining agreement.

(iii) *Removal of other employee special protective measure or limitations.* The employer shall remove any limitations placed on an employee or end any special protective measures provided to an employee pursuant to a final medical determination when a subsequent final medical determination indicates that the limitations or special protective measures are no longer necessary.

(iv) *Employer options pending a final medical determination.* Where the physician review mechanism used pursuant to the medical surveillance provisions of this section, has not yet resulted in a final medical determination with respect to an employee, the employer shall act as follows:

(A) *Removal.* The employer may remove the employee from exposure to MDA, provide special protective measures to the employee, or place limitations upon the employee, consistent with the medical findings, determinations, or recommendations of

the physician who has reviewed the employee's health status.

(B) *Return.* The employer may return the employee to his or her former job status, and end any special protective measures provided to the employee, consistent with the medical findings, determinations, or recommendations of any of the physicians who have reviewed the employee's health status, with two exceptions:

(1) If the initial removal, special protection, or limitation of the employee resulted from a final medical determination which differed from the findings, determinations, or recommendations of the initial physician; or

(2) The employee has been on removal status for the preceding six months as a result of exposure to MDA, then the employer shall await a final medical determination.

(v) *Medical removal protection benefits—(A) Provisions of medical removal protection benefits.* The employer shall provide to an employee up to six (6) months of medical removal protection benefits on each occasion that an employee is removed from exposure to MDA or otherwise limited pursuant to this section.

(B) *Definition of medical removal protection benefits.* For the purposes of this section, the requirement that an employer provide medical removal protection benefits means that the employer shall maintain the earnings, seniority, and other employment rights and benefits of an employee as though the employee had not been removed from normal exposure to MDA or otherwise limited.

(C) *Follow-up medical surveillance during the period of employee removal or limitations.* During the period of time that an employee is removed from normal exposure to MDA or otherwise limited, the employer may condition the provision of medical removal protection benefits upon the employee's participation in follow-up medical surveillance made available pursuant to this section.

(D) *Workers' compensation claims.* If a removed employee files a claim for workers' compensation payments for a MDA-related disability, then the employer shall continue to provide medical removal protection benefits pending disposition of the claim. To the extent that an award is made to the employee for earnings lost during the period of removal, the employer's medical removal protection obligation shall be reduced by such amount. The employer shall receive no credit for workers' compensation payments

received by the employee for treatment-related expenses.

(E) *Other credits.* The employer's obligation to provide medical removal protection benefits to a removed employee shall be reduced to the extent that the employee receives compensation for earnings lost during the period of removal either from a publicly or employer-funded compensation program, or receives income from employment with any employer made possible by virtue of the employee's removal.

(F) *Employees who do not recover within the 6 months of removal.* The employer shall take the following measures with respect to any employee removed from exposure to MDA:

(1) The employer shall make available to the employee a medical examination pursuant to this section to obtain a final medical determination with respect to the employee;

(2) The employer shall assure that the final medical determination obtained indicates whether or not the employee may be returned to his or her former job status, and, if not, what steps should be taken to protect the employee's health;

(3) Where the final medical determination has not yet been obtained, or once obtained indicates that the employee may not yet be returned to his or her former job status, the employer shall continue to provide medical removal protection benefits to the employee until either the employee is returned to former job status, or a final medical determination is made that the employee is incapable of ever safely returning to his or her former job status; and

(4) Where the employer acts pursuant to a final medical determination which permits the return of the employee to his or her former job status despite what would otherwise be an unacceptable liver function test, later questions concerning removing the employee again shall be decided by a final medical determination. The employer need not automatically remove such an employee pursuant to the MDA removal criteria provided by this section.

(vi) *Voluntary removal or restriction of an employee.* Where an employer, although not required by this section to do so, removes an employee from exposure to MDA or otherwise places limitations on an employee due to the effects of MDA exposure on the employee's medical condition, the employer shall provide medical removal protection benefits to the employee equal to that required by paragraph (n)(9)(v) of this section.

(o) *Recordkeeping*—(1) *Objective data for exempted operations.* (i) Where the employer has relied on objective data that demonstrate that products made from or containing MDA are not capable of releasing MDA or do not present a dermal exposure problem under the expected conditions of processing, use, or handling to exempt such operations from the initial monitoring requirements under paragraph (f)(2) of this section, the employer shall establish and maintain an accurate record of objective data reasonably relied upon in support of the exemption.

(ii) The record shall include at least the following information:

(A) The product qualifying for exemption;

(B) The source of the objective data;

(C) The testing protocol, results of testing, and/or analysis of the material for the release of MDA;

(D) A description of the operation exempted and how the data support the exemption; and

(E) Other data relevant to the operations, materials, processing, or employee exposures covered by the exemption.

(iii) The employer shall maintain this record for the duration of the employer's reliance upon such objective data.

(2) *Historical monitoring data.* (i) Where the employer has relied on historical monitoring data that demonstrate that exposures on a particular job will be below the action level to exempt such operations from the initial monitoring requirements under paragraph (f)(2) of this section, the employer shall establish and maintain an accurate record of historical monitoring data reasonably relied upon in support of the exemption.

(ii) The record shall include information that reflect the following conditions:

(A) The data upon which judgments are based are scientifically sound and were collected using methods that are sufficiently accurate and precise;

(B) The processes and work practices that were in use when the historical monitoring data were obtained are essentially the same as those to be used during the job for which initial monitoring will not be performed;

(C) The characteristics of the MDA-containing material being handled when the historical monitoring data were obtained are the same as those on the job for which initial monitoring will not be performed;

(D) Environmental conditions prevailing when the historical monitoring data were obtained are the same as those on the job for which

initial monitoring will not be performed; and

(E) Other data relevant to the operations, materials, processing, or employee exposures covered by the exception.

(iii) The employer shall maintain this record for the duration of the employer's reliance upon such historical monitoring data.

(3) The employer may utilize the services of competent organizations such as industry trade associations and employee associations to maintain the records required by this section.

(4) *Exposure measurements.* (i) The employer shall keep an accurate record of all measurements taken to monitor employee exposure to MDA.

(ii) This record shall include at least the following information:

(A) The date of measurement;

(B) The operation involving exposure to MDA;

(C) Sampling and analytical methods used and evidence of their accuracy;

(D) Number, duration, and results of samples taken;

(E) Type of protective devices worn, if any; and

(F) Name, social security number, and exposure of the employees whose exposures are represented.

(iii) The employer shall maintain this record for at least thirty (30) years, in accordance with 29 CFR 1910.20.

(5) *Medical surveillance.* (i) The employer shall establish and maintain an accurate record for each employee subject to medical surveillance by paragraph (n) of this section, in accordance with 29 CFR 1910.20.

(ii) The record shall include at least the following information:

(A) The name and social security number of the employee;

(B) A copy of the employee's medical examination results, including the medical history, questionnaire responses, results of any tests, and physician's recommendations.

(C) Physician's written opinions;

(D) Any employee medical complaints related to exposure to MDA; and

(E) A copy of the information provided to the physician as required by paragraph (n) of this section.

(iii) The employer shall ensure that this record is maintained for the duration of employment plus thirty (30) years, in accordance with 29 CFR 1910.20.

(iv) A copy of the employee's medical removal and return to work status.

(6) *Training records.* The employer shall maintain all employee training records for one (1) year beyond the last date of employment.

(7) *Availability.* (i) The employer, upon written request, shall make all records required to be maintained by this section available to the Assistant Secretary and the Director for examination and copying.

(ii) The employer, upon request, shall make any exposure records required by paragraphs (f) and (n) of this section available for examination and copying to affected employees, former employees, designated representatives, and the Assistant Secretary, in accordance with 29 CFR 1910.20(a)-(e) and (g)-(i).

(iii) The employer, upon request, shall make employee medical records required by paragraphs (n) and (o) of this section available for examination and copying to the subject employee, anyone having the specific written consent of the subject employee, and the Assistant Secretary, in accordance with 29 CFR 1910.20.

(8) *Transfer of records.* (i) The employer shall comply with the requirements concerning transfer of records set forth in 29 CFR 1910.20(h).

(ii) Whenever the employer ceases to do business and there is no successor employer to receive and retain the records for the prescribed period, the employer shall notify the Director at least 90 days prior to disposal and, upon request, transmit them to the Director.

(p) *Observation of monitoring*—(1) *Employee observation.* The employer shall provide affected employees, or their designated representatives, an opportunity to observe the measuring or monitoring of employee exposure to MDA conducted pursuant to paragraph (f) of this section.

(2) *Observation procedures.* When observation of the measuring or monitoring of employee exposure to MDA requires entry into areas where the use of protective clothing and equipment or respirators is required, the employer shall provide the observer with personal protective clothing and equipment or respirators required to be worn by employees working in the area, assure the use of such clothing and equipment or respirators, and require the observer to comply with all other applicable safety and health procedures.

(q) *Effective date.* This standard shall become effective on September 9, 1992.

(r) *Appendices.* The information contained in appendices A, B, C and D of this section is not intended by itself, to create any additional obligations not otherwise imposed by this standard nor detract from any existing obligation. The protocols for respiratory fit testing in appendix E of this section are mandatory.

(s) *Startup dates.* Compliance with all obligations of this standard commence September 9, 1992, except as follows:

(1) Initial monitoring under paragraph (f)(2) of this section shall be completed as soon as possible but no later than December 8, 1992.

(2) Medical examinations under paragraph (n) of this section shall be completed as soon as possible but no later than February 8, 1993.

(3) Emergency plans required by paragraph (e) of this section shall be provided and available for inspection and copying as soon as possible but no later than January 7, 1993.

(4) Initial training and education shall be completed as soon as possible but no later than January 7, 1993.

(5) Decontamination and lunch areas under paragraph (k) of this section shall be in operation as soon as possible but no later than September 9, 1993.

(6) Respiratory Protection required by paragraph (i) of this section shall be provided as soon as possible but no later than January 7, 1993.

(7) Written compliance plans required by paragraph (h)(5) of this section shall be completed and available for inspection and copying as soon as possible but no later than January 7, 1993.

(8) OSHA shall enforce the permissible exposure limits in paragraph (c) of this section no earlier than January 7, 1993.

(9) Engineering controls needed to achieve the PELs must be in place September 9, 1993.

(10) Personal protective clothing required by paragraph (j) of this section shall be available January 7, 1993.

Appendix A to Section 1926.60—Substance Data Sheet, for 4-4'-Methylenedianiline

I. Substance Identification

A. Substance: Methylenedianiline (MDA)

B. Permissible Exposure:

1. Airborne: Ten parts per billion parts of air (10 ppb), time-weighted average (TWA) for an 8-hour workday and an action level of five parts per billion parts of air (5 ppb).

2. Dermal: Eye contact and skin contact with MDA are not permitted.

C. Appearance and odor: White to tan solid; amine odor

II. Health Hazard Data

A. Ways in which MDA affects your health. MDA can affect your health if you inhale it, or if it comes in contact with your skin or eyes. MDA is also harmful if you happen to swallow it. Do not get MDA in eyes, on skin, or on clothing.

B. Effects of overexposure. 1. Short-term (acute) overexposure: Overexposure to MDA may produce fever, chills, loss of appetite, vomiting, jaundice. Contact may irritate skin, eyes and mucous membranes. Sensitization may occur.

2. Long-term (chronic) exposure. Repeated or prolonged exposure to MDA, even at relatively low concentrations, may cause cancer. In addition, damage to the liver, kidneys, blood, and spleen may occur with long term exposure.

3. Reporting signs and symptoms: You should inform your employer if you develop any signs or symptoms which you suspect are caused by exposure to MDA including yellow staining of the skin.

III. Protective Clothing and Equipment

A. Respirators. Respirators are required for those operations in which engineering controls or work practice controls are not adequate or feasible to reduce exposure to the permissible limit. If respirators are worn, they must have the joint Mine Safety and Health Administration and National Institute for Occupational Safety and Health (NIOSH) seal of approval, and cartridges or canisters must be replaced as necessary to maintain the effectiveness of the respirator. If you experience difficulty breathing while wearing a respirator, you may request a positive pressure respirator from your employer. You must be thoroughly trained to use the assigned respirator, and the training will be provided by your employer.

MDA does not have a detectable odor except at levels well above the permissible exposure limits. Do not depend on odor to warn you when a respirator canister is exhausted. If you can smell MDA while wearing a respirator, proceed immediately to fresh air. If you experience difficulty breathing while wearing a respirator, tell your employer.

B. Protective Clothing. You may be required to wear coveralls, aprons, gloves, face shields, or other appropriate protective clothing to prevent skin contact with MDA. Where protective clothing is required, your employer is required to provide clean garments to you, as necessary, to assure that the clothing protects you adequately. Replace or repair impervious clothing that has developed leaks.

MDA should never be allowed to remain on the skin. Clothing and shoes which are not impervious to MDA should not be allowed to become contaminated with MDA, and if they do, the clothing and shoes should be promptly removed and decontaminated. The clothing should be laundered to remove MDA or discarded. Once MDA penetrates shoes or other leather articles, they should not be worn again.

C. Eye protection. You must wear splashproof safety goggles in areas where liquid MDA may contact your eyes. Contact lenses should not be worn in areas where eye contact with MDA can occur. In addition, you must wear a face shield if your face could be splashed with MDA liquid.

IV. Emergency and First Aid Procedures

A. Eye and face exposure. If MDA is splashed into the eyes, wash the eyes for at least 15 minutes. See a doctor as soon as possible.

B. Skin exposure. If MDA is spilled on your clothing or skin, remove the contaminated clothing and wash the exposed skin with large amounts of soap and water

immediately. Wash contaminated clothing before you wear it again.

C. Breathing. If you or any other person breathes in large amounts of MDA, get the exposed person to fresh air at once. Apply artificial respiration if breathing has stopped. Call for medical assistance or a doctor as soon as possible. Never enter any vessel or confined space where the MDA concentration might be high without proper safety equipment and at least one other person present who will stay outside. A life line should be used.

D. Swallowing. If MDA has been swallowed and the patient is conscious, do not induce vomiting. Call for medical assistance or a doctor immediately.

V. Medical Requirements

If you are exposed to MDA at a concentration at or above the action level for more than 30 days per year, or exposed to liquid mixtures more than 15 days per year, your employer is required to provide a medical examination, including a medical history and laboratory tests, within 60 days of the effective date of this standard and annually thereafter. These tests shall be provided without cost to you. In addition, if you are accidentally exposed to MDA (either by ingestion, inhalation, or skin/eye contact) under conditions known or suspected to constitute toxic exposure to MDA, your employer is required to make special examinations and tests available to you.

VI. Observation of Monitoring

Your employer is required to perform measurements that are representative of your exposure to MDA and you or your designated representative are entitled to observe the monitoring procedure. You are entitled to observe the steps taken in the measurement procedure and to record the results obtained. When the monitoring procedure is taking place in an area where respirators or personal protective clothing and equipment are required to be worn; you and your representative must also be provided with, and must wear, the protective clothing and equipment.

VII. Access to Records

You or your representative are entitled to see the records of measurements of your exposure to MDA upon written request to your employer. Your medical examination records can be furnished to your physician or designated representative upon request by you to your employer.

VIII. Precautions for Safe Use, Handling and Storage

A. Material is combustible. Avoid strong acids and their anhydrides. Avoid strong oxidants. Consult supervisor for disposal requirements.

B. Emergency clean-up. Wear self-contained breathing apparatus and fully clothe the body in the appropriate personal protective clothing and equipment.

Appendix B to Section 1926.60—Substance Technical Guidelines, MDA

I. Identification

A. Substance identification.

1. Synonyms: CAS No. 101-77-9. 4,4-methylenedianiline; 4,4'-methylenebis(aniline); methylenedianiline; dianilino methane.

2. Formula: $C_{12}H_{14}N_2$

II. Physical Data

1. Appearance and Odor: White to tan solid; amine odor
2. Molecular Weight: 198.26
3. Boiling Point: 398-399 degrees C at 760 mm Hg
4. Melting Point: 88-93 degrees C (190-100 degrees F)
5. Vapor Pressure: 9 mm Hg at 232 degrees C
6. Evaporation Rate (n-butyl acetate=1): Negligible
7. Vapor Density (Air=1): Not Applicable
8. Volatile Fraction by Weight: Negligible
9. Specific Gravity (Water=1): Slight
10. Heat of Combustion: -8.40 kcal/g
11. Solubility in Water: Slightly soluble in cold water, very soluble in alcohol, benzene, ether, and many organic solvents.

III. Fire, Explosion, and Reactivity Hazard Data

1. Flash Point: 190 degrees C (374 degrees F) Setaflash closed cup.
2. Flash Point: 226 degrees C (439 degrees F) Cleveland open cup.
3. Extinguishing Media: Water spray; Dry Chemical; Carbon dioxide.
4. Special Fire Fighting Procedures: Wear self-contained breathing apparatus and protective clothing to prevent contact with skin and eyes.
5. Unusual Fire and Explosion Hazards: Fire or excessive heat may cause production of hazardous decomposition products.

IV. Reactivity Data

1. Stability: Stable.
2. Incompatibility: Strong oxidizers.
3. Hazardous Decomposition Products: As with any other organic material, combustion may produce carbon monoxide. Oxides of nitrogen may also be present.
4. Hazardous Polymerization: Will not occur.

V. Spill and Leak Procedures

1. Sweep material onto paper and place in fiber carton.
2. Package appropriately for safe feed to an incinerator or dissolve in compatible waste solvents prior to incineration.
3. Dispose of in an approved incinerator equipped with afterburner and scrubber or contract with licensed chemical waste disposal service.
4. Discharge treatment or disposal may be subject to federal, state, or local laws.
5. Wear appropriate personal protective equipment.

VI. Special Storage and Handling Precautions

A. High exposure to MDA can occur when transferring the substance from one container to another. Such operations should be well

ventilated and good work practices must be established to avoid spills.

B. Pure MDA is a solid with a low vapor pressure. Grinding or heating operations increase the potential for exposure.

C. Store away from oxidizing materials.

D. Employers shall advise employees of all areas and operations where exposure to MDA could occur.

VII. Housekeeping and Hygiene Facilities

A. The workplace should be kept clean, orderly, and in a sanitary condition.

The employer should institute a leak and spill detection program for operations involving MDA in order to detect sources of fugitive MDA emissions.

B. Adequate washing facilities with hot and cold water are to be provided and maintained in a sanitary condition. Suitable cleansing agents should also be provided to assure the effective removal of MDA from the skin.

VIII. Common Operations

Common operations in which exposure to MDA is likely to occur include the following: Manufacture of MDA; Manufacture of Methylene diisocyanate; Curing agent for epoxy resin structures; Wire coating operations; and filament winding.

Appendix C to Section 1926.60—Medical Surveillance Guidelines for MDA

I. Route of Entry

Inhalation; skin absorption; ingestion. MDA can be inhaled, absorbed through the skin, or ingested.

II. Toxicology

MDA is a suspect carcinogen in humans. There are several reports of liver disease in humans and animals resulting from acute exposure to MDA. A well documented case of an acute cardiomyopathy secondary to exposure to MDA is on record. Numerous human cases of hepatitis secondary to MDA are known. Upon direct contact MDA may also cause damage to the eyes. Dermatitis and skin sensitization have been observed. Almost all forms of acute environmental hepatic injury in humans involve the hepatic parenchyma and produce hepatocellular jaundice. This agent produces intrahepatic cholestasis. The clinical picture consists of cholestatic jaundice, preceded or accompanied by abdominal pain, fever, and chills. Onset in about 60% of all observed cases is abrupt with severe abdominal pain. In about 30% of observed cases, the illness presented and evolved more slowly and less dramatically, with only slight abdominal pain. In about 10% of the cases only jaundice was evident. The cholestatic nature of the jaundice is evident in the prominence of itching, the histologic predominance of bile stasis, and portal inflammatory infiltration, accompanied by only slight parenchymal injury in most cases, and by the moderately elevated transaminase values. Acute, high doses, however, have been known to cause hepatocellular damage resulting in elevated SGPT, SGOT, alkaline phosphatase and bilirubin.

Absorption through the skin is rapid. MDA is metabolized and excreted over a 48-hour period. Direct contact may be irritating to the

skin, causing dermatitis. Also MDA which is deposited on the skin is not thoroughly removed through washing.

MDA may cause bladder cancer in humans. Animal data supporting this assumption is not available nor is conclusive human data. However, human data collected on workers at a helicopter manufacturing facility where MDA is used suggests a higher incidence of bladder cancer among exposed workers.

III. Signs and Symptoms

Skin may become yellow from contact with MDA.

Repeated or prolonged contact with MDA may result in recurring dermatitis (red-itchy, cracked skin) and eye irritation. Inhalation, ingestion or absorption through the skin at high concentrations may result in hepatitis, causing symptoms such as fever and chills, nausea and vomiting, dark urine, anorexia, rash, right upper quadrant pain and jaundice. Corneal burns may occur when MDA is splashed in the eyes.

IV. Treatment of Acute Toxic Effects/Emergency Situation

If MDA gets into the eyes, immediately wash eyes with large amounts of water. If MDA is splashed on the skin, immediately wash contaminated skin with mild soap or detergent. Employee should be removed from exposure and given proper medical treatment. Medical tests required under the emergency section of the medical surveillance paragraph (n)(4) of this section must be conducted.

If the chemical is swallowed do not induce vomiting but remove by gastric lavage.

Appendix D Section 1926.60—Sampling and Analytical Methods for MDA Monitoring and Measurement Procedures

Measurements taken for the purpose of determining employee exposure to MDA are best taken so that the representative average 8-hour exposure may be determined from a single 8-hour sample or two (2) 4-hour samples. Short-time interval samples (or grab samples) may also be used to determine average exposure level if a minimum of five measurements are taken in a random manner over the 8-hour work shift. Random sampling means that any portion of the work shift has the same chance of being sampled as any other. The arithmetic average of all such random samples taken on one work shift is an estimate of an employee's average level of exposure for that work shift. Air samples should be taken in the employee's breathing zone (air that would most nearly represent that inhaled by the employee).

There are a number of methods available for monitoring employee exposures to MDA. The method OSHA currently uses is included below.

The employer however has the obligation of selecting any monitoring method which meets the accuracy and precision requirements of the standard under his unique field conditions. The standard requires that the method of monitoring must have an accuracy, to a 95 percent confidence level, of not less than plus or minus 25 percent for the select PEL.

OSHA Methodology

Sampling Procedure

Apparatus

Samples are collected by use of a personal sampling pump that can be calibrated within $\pm 5\%$ of the recommended flow rate with the sampling filter in line.

Samples are collected on 37 mm Gelman type A/E glass fiber filters treated with sulfuric acid. The filters are prepared by soaking each filter with 0.5 mL of 0.26N H_2SO_4 . (0.26 N H_2SO_4 can be prepared by diluting 1.5 mL of 36N H_2SO_4 to 200 mL with deionized water.) The filters are dried in an oven at 100 degrees C for one hour and then assembled into two-piece 37 mm polystyrene cassettes with backup pads. The cassettes are sealed with shrink bands and the ends are plugged with plastic plugs.

After sampling, the filters are carefully removed from the cassettes and individually transferred to small vials containing approximately 2 mL deionized water. The vials must be tightly sealed. The water can be added before or after the filters are transferred. The vials must be sealable and capable of holding at least 7 mL of liquid. Small glass scintillation vials with caps containing Teflon liners are recommended.

Reagents

Deionized water is needed for addition to the vials.

Sampling Technique

Immediately before sampling, remove the plastic plugs from the filter cassettes.

Attach the cassette to the sampling pump with flexible tubing and place the cassette in the employee's breathing zone.

After sampling, seal the cassettes with plastic plugs until the filters are transferred to the vials containing deionized water.

At some convenient time within 10 hours of sampling, transfer the sample filters to vials. Seal the small vials lengthwise.

Submit at least one blank filter with each sample set. Blanks should be handled in the same manner as samples, but no air is drawn through them.

Record sample volumes (in L of air) for each sample, along with any potential interferences.

Retention Efficiency

A retention efficiency study was performed by drawing 100 L of air (80% relative humidity) at 1 L/min through sample filters that had been spiked with 0.814 μg MDA. Instead of using backup pads, blank acid-treated filters were used as backups in each cassette. Upon analysis, the top filters were found to have an average of 91.8% of the spiked amount. There was no MDA found on the bottom filters, so the amount lost was probably due to the slight instability of the MDA salt.

Extraction Efficiency

The average extraction efficiency for six filters spiked at the target concentration is 99.6%.

The stability of extracted and derivatized samples was verified by reanalyzing the above six samples the next day using fresh standards. The average extraction efficiency for the reanalyzed samples is 98.7%.

Recommended Air Volume and Sampling Rate

The recommended air volume is 100 L.
The recommended sampling rate is 1 L/min.

Interferences (Sampling)

MDI appears to be a positive interference. It was found that when MDI was spiked onto an acid-treated filter, the MDI converted to MDA after air was drawn through it.

Suspected interferences should be reported to the laboratory with submitted samples.

Safety Precautions (Sampling)

Attach the sampling equipment to the employees so that it will not interfere with work performance or safety.

Follow all safety procedures that apply to the work area being sampled.

Analytical Procedure

Apparatus: The following are required for analysis.

A GC equipped with an electron capture detector. For this evaluation a Tracor 222 Gas Chromatograph equipped with a Nickel 63 High Temperature Electron Capture Detector and a Linearizer was used.

A GC column capable of separating the MDA derivative from the solvent and interferences. A 6 ft \times 2 mm ID glass column packed with 3% OV-101 coated on 100/120 Gas Chrom Q was used in this evaluation.

A electronic integrator or some other suitable means of measuring peak areas or heights.

Small resealable vials with Teflon-lined caps capable of holding 4 mL.

A dispenser or pipet for toluene capable of delivering 2.9 mL.

Pipets (or repipets with plastic or Teflon tips) capable of delivering 1 mL for the sodium hydroxide and buffer solutions.

A repipet capable of delivering 25 μL HFAA.

Syringes for preparation of standards and injection of standards and samples into a GC.

Volumetric flasks and pipets to dilute the pure MDA in preparation of standards.

Disposable pipets to transfer the toluene layers after the samples are extracted.

Reagents

0.5 NaOH prepared from reagent grade NaOH.

Toluene, pesticide grade. Burdick and Jackson distilled in glass toluene was used.

Heptafluorobutyric acid anhydride (HFAA). HFAA from Pierce Chemical Company was used.

pH 7.0 phosphate buffer, prepared from 136 g potassium dihydrogen phosphate and 1 L deionized water. The pH is adjusted to 7.0 with saturated sodium hydroxide solution.

4,4'-Methylenedianiline (MDA), reagent grade.

Standard Preparation

Concentrated stock standards are prepared by diluting pure MDA with toluene.

Analytical standards are prepared by injecting μL amounts of diluted stock standards into vials that contain 2.0 mL toluene.

25 μL HFAA are added to each vial and the vials are capped and shaken for 10 seconds.

After 10 min, 1 mL of buffer is added to each vial.

The vials are recapped and shaken for 10 seconds.

After allowing the layers to separate, aliquots of the toluene (upper) layers are removed with a syringe and analyzed by GC.

Analytical standard concentrations should bracket sample concentrations. Thus, if samples fall out of the range of prepared standards, additional standards must be prepared to ascertain detector response.

Sample preparation

The sample filters are received in vials containing deionized water.

1 mL of 0.5N NaOH and 2.0 mL toluene are added to each vial.

The vials are recapped and shaken for 10 min.

After allowing the layers to separate, approximately 1 mL aliquots of the toluene (upper) layers are transferred to separate vials with clean disposable pipets.

The toluene layers are treated and analyzed.

Analysis

GC conditions

Zone temperatures:

Column—220 degrees C

Injector—235 degrees C

Detector—335 degrees C

Gas flows, Ar/ CH_4 Column—28 mL/min (95/5)

Purge—40 mL/min

Injection volume: 5.0 μL

Column: 6 ft \times 1/8 in ID glass, 3% OV-101 on 100/120 Gas Chrom Q

Retention time of MDA derivative: 3.5 min

Chromatogram

Peak areas or heights are measured by an integrator or other suitable means.

A calibration curve is constructed by plotting response (peak areas or heights) of standard injections versus μg of MDA per sample. Sample concentrations must be bracketed by standards.

Interferences (Analytical)

Any compound that gives an electron capture detector response and has the same general retention time as the HFAA derivative of MDA is a potential interference.

Suspected interferences reported to the laboratory with submitted samples by the industrial hygienist must be considered before samples are derivatized.

GC parameters may be changed to possibly circumvent interferences.

Retention time on a single column is not considered proof of chemical identity. Analyte identity should be confirmed by GC/MS if possible.

Calculations

The analyte concentration for samples is obtained from the calibration curve in terms of μg MDA per sample. The extraction efficiency is 100%. If any MDA is found on the blank, that amount is subtracted from the sample amounts. The air concentrations are calculated using the following formulae:
 $\mu g/m^3 = (\mu g \text{ MDA per sample}) (1000)/(L \text{ of air sampled})$

$$\text{ppb} = (\mu\text{g}/\text{m}^3) (24.46)/(198.3) = (\mu\text{g}/\text{m}^3) (0.1233)$$

where 24.46 is the molar volume at 25 degrees C and 760 mm Hg.

Safety Precautions (Analytical)

Avoid skin contact and inhalation of all chemicals.

Restrict the use of all chemicals to a fume hood if possible.

Wear safety glasses and a lab coat at all times while in the lab area.

Appendix E to Section 1926.60—Qualitative and Quantitative Fit Testing Procedures

Qualitative Protocols

1. Isoamyl Acetate (Banana Oil) Protocol

A. Odor threshold screening: 1. Three 1-liter glass jars with metal lids (e.g. Mason or Bell jars) are required.

2. Odor-free water (e.g. distilled or spring water) at approximately 25° C shall be used for the solutions.

3. The isoamyl acetate (IAA) (also known as isopentyl acetate) stock solution is prepared by adding 1 cc of pure IAA to 800 cc of odor free water in a 1-liter jar and shaking for 30 seconds. This solution shall be prepared new at least weekly.

4. The screening test shall be conducted in a room separate from the room used for actual fit testing. The two rooms shall be well ventilated so that circulation of the test solution does not occur and cross-contaminate the testing different sites.

5. The odor test solution is prepared in a second jar by placing 0.4 cc of the stock solution into 500 cc of odor free water using a clean dropper or pipette. Shake for 30 seconds and allow to stand for two to three minutes so that the IAA concentration above the liquid may reach equilibrium. This solution may be used for only one day.

6. A test blank is prepared in a third jar by adding 500 cc of odor free water.

7. The odor test and test blank jars shall be labelled 1 and 2 for jar identification.

8. The following instructions shall be typed on a card and placed on the table in front of the two test jars (i.e., 1 and 2): "The purpose of this test is to determine if you can smell banana oil at a low concentration. The two bottles in front of you contain water. One of these bottles also contains a small amount of banana oil. Be sure the covers are on tight, then shake each bottle for two seconds. Unscrew the lid of each bottle, one at a time, and sniff at the mouth of the bottle. Indicate to the test conductor which bottle contains banana oil."

9. The mixtures used in the IAA odor detection test shall be prepared in an area separate from where the test is performed, in order to prevent olfactory fatigue in the subject.

10. If the test subject is unable to correctly identify the jar containing the odor test solution, the IAA qualitative fit test may not be used.

11. If the test subject correctly identifies the jar containing the odor test solution, the test subject may proceed to respirator selection and fit testing.

B. Respirator Selection. 1. The test subject shall be allowed to pick the most comfortable respirator from a selection including

respirators of various sizes from different manufacturers. The selection shall include at least three sizes of elastomeric half facepieces, from at least two manufacturers.

2. The selection process shall be conducted in a room separate from the fit-test chamber to prevent odor fatigue. Prior to the selection process, the test subject shall be shown how to put on a respirator, how it should be positioned on the face, how to set strap tension and how to determine a "comfortable" respirator. A mirror shall be available to assist the subject in evaluating the fit and positioning of the respirator. This instruction may not constitute the subject's formal training on respirator use, as it is only a review.

3. The test subject should understand that the employee is being asked to select the respirator which provides the most comfortable fit.

4. The test subject holds each facepiece up to the face and eliminates those which obviously do not give a comfortable fit. Normally, selection will begin with a half-mask and if a comfortable fit cannot be found, the subject will be asked to test the full facepiece respirators. (A small percentage of users will not be able to wear any half-mask.)

5. The more comfortable facepieces are noted; the most comfortable mask is donned and worn at least five minutes to assess comfort. All donning and adjustments of the facepiece shall be performed by the test subject without assistance from the test conductor or other person. Assistance in assessing comfort can be given by discussing the points in #6 below. If the test subject is not familiar with using a particular respirator, the test subject shall be directed to don the mask several times and to adjust the straps each time to become adept at setting proper tension on the straps.

6. Assessment of comfort shall include reviewing the following points with the test subject and allowing the test subject adequate time to determine the comfort of the respirator after donning:

- Positioning of mask on nose.
- Room for eye protection.
- Room to talk.
- Positioning mask on face and cheeks.

7. The following criteria shall be used to help determine the adequacy of the respirator fit:

- Chin properly placed.
- Strap tension.
- Fit across nose bridge.
- Distance from nose to chin.
- Tendency to slip.
- Self-observation in mirror.

8. The test subject shall perform the conventional negative or positive-pressure fit checks (e.g., see ANSI Z88.2-1980A7). Before beginning the negative- or positive-pressure test, the subject shall be told to "seat" the mask by rapidly moving the head from side-to-side and up and down, while taking a few deep breaths.

9. The test subject is now ready for fit testing.

10. After passing the fit test, the test subject shall be questioned again regarding the comfort of the respirator. If the respirator has become uncomfortable, another model of respirator shall be tried.

11. The employee shall be given the opportunity to select a different facepiece and to be retested if the chosen facepiece becomes increasingly uncomfortable at any time.

C. Fit Test. 1. The fit test chamber shall be similar to a clear 55 gallon drum liner suspended inverted over a 2-foot diameter frame, so that the top of chamber is about 6 inches above the test subject's head. The inside top center of the chamber shall have a small hook attached.

2. Each respirator used for the fitting and fit testing shall be equipped with organic vapor cartridges or offer protection against organic vapors. The cartridges or canisters shall be replaced as necessary to maintain the effectiveness of the respirator.

3. After selecting, donning, and properly adjusting a respirator, the test subject shall wear it to the fit testing room. This room shall be separate from the room used for odor threshold screening and respirator selection, and shall be well ventilated, as by an exhaust fan or lab hood, to prevent general room contamination.

4. A copy of the following test exercises and Rainbow Passage shall be taped to the inside of the test chamber:

Test Exercises

- i. Breathe normally.
- ii. Breathe deeply. Be certain breaths are deep and regular.
- iii. Turn head all the way from one side to the other. Inhale on each side. Be certain movement is complete. Do not bump the respirator against the shoulders.
- iv. Nod head up-and-down. Inhale when head is in the full up position (looking toward ceiling). Be certain motions are complete and made about every second. Do not bump the respirator on the chest.
- v. Talking. Talk aloud and slowly for several minutes. The following paragraph is called the Rainbow Passage. Reading it aloud will result in a wide range of facial movements, and thus be useful to satisfy this requirement. Alternative passages which serve the same purpose may also be used.
- vi. Jog in place.
- vii. Breathe normally.

Rainbow Passage

When the sunlight strikes raindrops in the air, they act like a prism and form a rainbow. The rainbow is a division of white light into many beautiful colors. These take the shape of a long round arch, with its path high above, and its two ends apparently beyond the horizon. There is, according to legend, a boiling pot of gold at one end. People look, but no one ever finds it. When a man looks for something beyond reach, his friends say he is looking for the pot of gold at the end of the rainbow.

5. Each test subject shall wear the respirator for at least 10 minutes before starting the fit test.

6. Upon entering the test chamber, the test subject shall be given a 6-inch by 5-inch piece of paper towel or other porous absorbent single ply material, folded in half and wetted with three-quarters of one cc of pure IAA. The test subject shall hang the wet towel on the hook at the top of the chamber.

7. Allow two minutes for the IAA test concentration to be reached before starting the fit-test exercises.

8. Each exercise described in #4 above shall be performed for at least one minute.

9. If at any time during the test, the subject detects the banana-like odor of IAA, the test has failed. The subject shall quickly exit from the test chamber and leave the test area to avoid olfactory fatigue.

10. If the test is failed, the subject shall return to the selection room and remove the respirator, repeat the odor sensitivity test, select and put on another respirator, return to the test chamber, and again begin the procedure described in the c (4) through c (8) above. The process continues until a respirator that fits well has been found. Should the odor sensitivity test be failed, the subject shall wait about 5 minutes before retesting. Odor sensitivity will usually have returned by this time.

11. If a person cannot pass the fit test described above wearing a half-mask respirator from the available selection, full facepiece models must be used.

12. When a respirator is found that passes the test, the subject must break the facepiece seal and take a breath before exiting the chamber. This is to assure that the reason the test subject is not smelling the IAA is the good fit of the respirator facepiece seal and not olfactory fatigue.

13. When the test subject leaves the chamber, the subject shall remove the saturated towel and return it to the person conducting the test. To keep the area from becoming contaminated, the used towels shall be kept in a self-sealing bag so there is no significant IAA concentration buildup in the test chamber during subsequent tests.

14. Persons who have successfully passed this fit test with a half-mask respirator may be assigned the use of the test respirator in atmospheres with up to 10 times the PEL. In atmospheres greater than 10 times, and less than 50 times the PEL (up to 50 ppm), the subject must pass the IAA test using a full face negative pressure respirator. (The concentration of the IAA inside the test chamber must be increased by five times for QLFT of the full facepiece.)

15. The test shall not be conducted if there is any hair growth between the skin and the facepiece sealing surface.

16. If hair growth or apparel interfere with a satisfactory fit, then they shall be altered or removed so as to eliminate interference and allow a satisfactory fit. If a satisfactory fit is still not attained, the test subject must use a positive-pressure respirator such as a powered air-purifying respirator, supplied air respirator, or self-contained breathing apparatus.

17. If a test subject exhibits difficulty in breathing during the tests, she or he shall be referred to a physician trained in respiratory diseases or pulmonary medicine to determine whether the test subject can wear a respirator while performing her or his duties.

18. Qualitative fit testing shall be repeated at least every 12 months.

19. In addition, because the sealing of the respirator may be affected, qualitative fit testing shall be repeated immediately when the test subject has a:

(1) Weight change of 20 pounds or more,
(2) Significant facial scarring in the area of the facepiece seal,

(3) Significant dental changes; i.e., multiple extractions without prosthesis, or acquiring dentures,

(4) Reconstructive or cosmetic surgery, or
(5) Any other condition that may interfere with facepiece sealing.

D. Recordkeeping. A summary of all test results shall be maintained by the employer for 3 years. The summary shall include:

- (1) Name of test subject.
- (2) Date of testing.
- (3) Name of the test conductor.
- (4) Respirators selected (indicate manufacturer, model, size and approval number).
- (5) Testing agent.

II. Saccharin Solution Aerosol Protocol

A. Respirator Selection. Respirators shall be selected as described in section IB (respirator selection) above, except that each respirator shall be equipped with a particulate filter.

B. Taste Threshold Screening. 1. An enclosure placed over the head and shoulders shall be used for threshold screening (to determine if the individual can taste saccharin) and for fit testing. The enclosure shall be approximately 12 inches in diameter by 14 inches tall with at least the front clear to allow free movement of the head when a respirator is worn.

2. The test enclosure shall have a three-quarter inch hole in front of the test subject's nose and mouth area to accommodate the nebulizer nozzle.

3. The entire screening and testing procedure shall be explained to the test subject prior to conducting the screening test.

4. During the threshold screening test, the test subject shall don the test enclosure and breathe with open mouth with tongue extended.

5. Using a DeVilbiss Model 40 Inhalation Medication Nebulizer or equivalent, the test conductor shall spray the threshold check solution into the enclosure. This nebulizer shall be clearly marked to distinguish it from the fit test solution nebulizer.

6. The threshold check solution consists of 0.83 grams of sodium saccharin, USP in water. It can be prepared by putting 1 cc of the test solution (see C 7 below) in 100 cc of water.

7. To produce the aerosol, the nebulizer bulb is firmly squeezed so that it collapses completely, then is released and allowed to fully expand.

8. Ten squeezes of the nebulizer bulb are repeated rapidly and then the test subject is asked whether the saccharin can be tasted.

9. If the first response is negative, ten more squeezes of the nebulizer bulb are repeated rapidly and the test subject is again asked whether the saccharin can be tasted.

10. If the second response is negative ten more squeezes are repeated rapidly and the test subject is again asked whether the saccharin can be tasted.

11. The test conductor will take note of the number of squeezes required to elicit a taste response.

12. If the saccharin is not tasted after 30 squeezes (Step 10), the saccharin fit test cannot be performed on the test subject.

13. If a taste response is elicited, the test subject shall be asked to take note of the taste for reference in the fit test.

14. Correct use of the nebulizer means that approximately 1 cc of liquid is used at a time in the nebulizer body.

15. The nebulizer shall be thoroughly rinsed in water, shaken dry, and refilled at least every four hours.

C. Fit Test. 1. The test subject may not eat, drink (except plain water), or chew gum for 15 minutes before the test.

2. The test subject shall don and adjust the respirator without assistance from any person.

3. The fit test uses the same enclosure described in IIB above.

4. Each test subject shall wear the respirator for a least 10 minutes before starting the fit test.

(a) This would be an appropriate time to talk with the test subject; to explain the fit test, the importance of cooperation and, the purpose for the head exercises; or to demonstrate some of the exercises.

(b) The test subject shall perform the conventional negative or positive pressure fit tests (See ANZI Z88.2 1980 A7).

5. The test subject shall enter the enclosure while wearing the respirator selected in section IB above. This respirator shall be properly adjusted and equipped with a particulate filter.

6. A second DeVilbiss Model 40 Inhalation Medication Nebulizer is used to spray the fit test solution into the enclosure. This nebulizer shall be clearly marked to distinguish it from the screening test solution nebulizer.

7. The fit test solution is prepared by adding 83 grams of sodium saccharin to 100 cc of warm water.

8. As before, the test subject shall breathe with mouth open and tongue extended.

9. The nebulizer is inserted into the hole in the front of the enclosure and the fit test solution is sprayed into the enclosure using the same technique as for the taste threshold screening and the same number of squeezes required to elicit a taste response in the screening. (See B8 through B10 above.)

10. After generation of the aerosol read the following instructions to the test subject. The test subject shall perform the exercises for one minute each.

- i. Breathe normally.
- ii. Breathe deeply. Be certain breaths are deep and regular.
- iii. Turn head all the way from one side to the other. Be certain movement is complete. Inhale on each side. Do not bump the respirator against the shoulders.
- iv. Nod head up-and-down. Be certain motions are complete. Inhale when head is in the full up position (when looking toward the ceiling). Do not bump the respirator on the chest.

v. Talk. Talk aloud and slowly. The following paragraph is called the Rainbow Passage. Reading it will result in a wide range of facial movements, and thus be useful to satisfy this requirement.

- vi. Jog in place.
- vii. Breathe normally.

Rainbow Passage

When the sunlight strikes raindrops in the air, they act like a prism and form a rainbow. The rainbow is a division of white light into many beautiful colors. These take the shape of a long round arch, with its path high above, and its two ends apparently beyond the horizon. There is, according to legend, a boiling pot of gold at one end. People look, but no one ever finds it. When a man looks for something beyond his reach, his friends say he is looking for the pot of gold at the end of the rainbow.

11. At the beginning of each exercise, the aerosol concentration shall be replenished using one-half the number of squeezes as initially described in C9.

12. The test subject shall indicate to the test conductor if at any time during the fit test the taste of saccharin is detected.

13. If the saccharin is detected the fit is deemed unsatisfactory and a different respirator shall be tried.

14. Successful completion of the test protocol shall allow the use of the half mask tested respirator in contaminated atmospheres up to 10 times the PEL of MDA. In other words this protocol may not be used to assign protection factors no higher than ten.

15. The test shall not be conducted if there is any hair growth between the skin and the facepiece sealing surface.

16. If hair growth or apparel interfere with a satisfactory fit, then they shall be altered or removed so as to eliminate interference and allow a satisfactory fit. If a satisfactory fit is still not attained, the test subject must use a positive-pressure respirator such as powered air-purifying respirators, supplied air respirator, or self-contained breathing apparatus.

17. If a test subject exhibits difficulty in breathing during the tests, she or he shall be referred to a physician trained in respirator diseases or pulmonary medicine to determine whether the test subject can wear a respirator while performing her or his duties.

18. Qualitative fit testing shall be repeated at least every 12 months.

19. In addition, because the sealing of the respirator may be affected, qualitative fit testing shall be repeated immediately when the test subject has a:

- (1) Weight change of 20 pounds or more.
- (2) Significant facial scarring in the area of the facepiece seal.
- (3) Significant dental changes; i.e., multiple extractions without prosthesis, or acquiring dentures.
- (4) Reconstructive or cosmetic surgery, or
- (5) Any other condition that may interfere with facepiece sealing.

D. Recordkeeping. A summary of all test results shall be maintained by the employer for 3 years. The summary shall include:

- (1) Name of test subject.
- (2) Date of testing.
- (3) Name of test conductor.
- (4) Respirators selected (indicate manufacturer, model, size and approval number).
- (5) Testing agent.

III. Irritant Fume Protocol

A. Respirator selection. Respirators shall be selected as described in section IB above, except that each respirator shall be equipped with a combination of high-efficiency and acid-gas cartridges.

B. Fit Test. 1. The test subject shall be allowed to smell a weak concentration of the irritant smoke to familiarize the subject with the characteristic odor.

2. The test subject shall properly don the respirator selected as above, and wear it for at least 10 minutes before starting the fit test.

3. The test conductor shall review this protocol with the test subject before testing.

4. The test subject shall perform the conventional positive pressure and negative pressure fit checks (see ANSI Z88.2 1980). Failure of either check shall be cause to select an alternate respirator.

5. Break both ends of a ventilation smoke tube containing stannic oxychloride, such as the MSA part #5645, or equivalent. Attach a short length of tubing to one end of the smoke tube. Attach the other end of the smoke tube to a low pressure air pump set to deliver 200 milliliters per minute.

6. Advise the test subject that the smoke can be irritating to the eyes and instruct the subject to keep the eyes closed while the test is performed.

7. The test conductor shall direct the stream of irritant smoke from the tube towards the facepiece area of the test subject. The person conducting the test shall begin with the tube at least 12 inches from the facepiece and gradually move to within one inch, moving around the whole perimeter of the mask.

8. The test subject shall be instructed to do the following exercises while the respirator is being challenged by the smoke. Each exercise shall be performed for one minute.

- i. Breathe normally.
- ii. Breathe deeply. Be certain breaths are deep and regular.
- iii. Turn head all the way from one side to the other. Be certain movement is complete. Inhale on each side. Do not bump the respirator against the shoulders.
- iv. Nod head up-and-down. Be certain motions are complete and made every second. Inhale when head is in the full up position (looking toward ceiling). Do not bump the respirator against the chest.

v. Talking. Talk aloud and slowly for several minutes. The following paragraph is called the Rainbow Passage. Reading it will result in a wide range of facial movements, and thus be useful to satisfy this requirement. Alternative passages which serve the same purpose may also be used.

Rainbow Passage

When the sunlight strikes raindrops in the air, they act like a prism and form a rainbow. The rainbow is a division of white light into many beautiful colors. These take the shape of a long round arch, with its path high above, and its two ends apparently beyond the horizon. There is, according to legend, a boiling pot of gold at one end. People look, but no one ever finds it. When a man looks for something beyond his reach, his friends say he is looking for the pot of gold at the end of the rainbow.

- vi. Jogging in Place.
- vii. Breathe normally.

9. The test subject shall indicate to the test conductor if the irritant smoke is detected. If smoke is detected, the test conductor shall stop the test. In this case, the tested respirator is rejected and another respirator shall be selected.

10. Each test subject passing the smoke test (i.e. without detecting the smoke) shall be given a sensitivity check of smoke from the same tube to determine if the test subject reacts to the smoke. Failure to evoke a response shall void the fit test.

11. Steps B4, B9, B10 of this fit test protocol shall be performed in a location with exhaust ventilation sufficient to prevent general contamination of the testing area by the test agents.

12. Respirators successfully tested by the protocol may be used in contaminated atmospheres up to ten times the PEL of MDA.

13. The test shall not be conducted if there is any hair growth between the skin and the facepiece sealing surface.

14. If hair growth or apparel interfere with a satisfactory fit, then they shall be altered or removed so as to eliminate interference and allow a satisfactory fit. If a satisfactory fit is still not attained, the test subject must use a positive-pressure respirator such as powered air-purifying respirators, supplied air respirator, or self-contained breathing apparatus.

15. If a test subject exhibits difficulty in breathing during the tests, she or he shall be referred to a physician trained in respirator diseases or pulmonary medicine to determine whether the test subject can wear a respirator while performing her or his duties.

16. Qualitative fit testing shall be repeated at least every 12 months.

17. In addition, because the sealing of the respirator may be affected, qualitative fit testing shall be repeated immediately when the test subject has a:

- (1) Weight change of 20 pounds or more,
- (2) Significant facial scarring in the area of the facepiece seal,
- (3) Significant dental changes; i.e., multiple extractions without prosthesis, or acquiring dentures,
- (4) Reconstructive or cosmetic surgery, or
- (5) Any other condition that may interfere with facepiece sealing.

C. Recordkeeping. A summary of all test results shall be maintained by the employer for 3 years. The summary shall include:

- (1) Name of test subject.
- (2) Date of testing.
- (3) Name of test conductor.
- (4) Respirators selected (indicate manufacturer, model, size and approval number).
- (5) Testing agent.

Quantitative Fit Test Procedures

1. General. a. The method applies to the negative-pressure nonpowered air-purifying respirators only.

b. The employer shall assign an individual (with help as needed) who shall assume the full responsibility for implementing the respirator quantitative fit test program.

2. **Definition.** a. "Quantitative Fit Test" means the measurement of the effectiveness of a respirator seal in excluding the ambient atmosphere. The test is performed by dividing the measured concentration of challenge agent in a test chamber by the measured concentration of the challenge agent inside the respirator facepiece when the normal air purifying element has been replaced by an essentially perfect purifying element.

b. "Challenge Agent" means the air contaminant introduced into a test chamber so that its concentration inside and outside the respirator may be compared.

c. "Test Subject" means the person wearing the respirator for quantitative fit testing.

d. "Normal Standing Position" means standing erect and straight with arms down along the sides and looking straight ahead.

e. "Fit Factor" means the ratio of challenge agent concentration outside with respect to the inside of a respirator inlet covering (facepiece or enclosure).

3. **Apparatus.** a. **Instrumentation.** Corn oil, sodium chloride or other appropriate aerosol generation, dilution, and measurement systems shall be used for quantitative fit test.

b. **Test chamber.** The test chamber shall be large enough to permit all test subjects to freely perform all required exercises without distributing the challenge agent concentration or the measurement apparatus. The test chamber shall be equipped and constructed so that the challenge agent is effectively isolated from the ambient air yet uniform in concentration throughout the chamber.

c. When testing air-purifying respirators, the normal filter or cartridge element shall be replaced with a high-efficiency particulate filter supplied by the same manufacturer.

d. The sampling instrument shall be selected so that a strip chart record may be made of the test showing the rise and fall of challenge agent concentration with each inspiration and expiration at fit factors of at least 2,000.

e. The combination of substitute air-purifying elements (if any), challenge agent, and challenge agent concentration in the test chamber shall be such that the test subject is not exposed in excess of PEL to the challenge agent at any time during the testing process.

f. The sampling port on the test specimen respirator shall be placed and constructed so that there is no detectable leak around the port, a free air flow is allowed into the sampling line at all times and so there is no interference with the fit or performance of the respirator.

g. The test chamber and test set-up shall permit the person administering the test to observe one test subject inside the chamber during the test.

h. The equipment generating the challenge atmosphere shall maintain the concentration of challenge agent constant within a 10 percent variation for the duration of the test.

i. The time lag (interval between an event and its being recorded on the strip chart) of the instrumentation may not exceed 2 seconds.

j. The tubing for the test chamber atmosphere and for the respirator sampling port shall be the same diameter, length and material. It shall be kept as short as possible.

The smallest diameter tubing recommended by the manufacturer shall be used.

k. The exhaust flow from the test chamber shall pass through a high-efficiency filter before release to the room.

l. When sodium chloride aerosol is used, the relative humidity inside the test chamber shall not exceed 50 percent.

4. **Procedural Requirements.** a. The fitting of half-mask respirators should be started with those having multiple sizes and a variety of interchangeable cartridges and canisters such as the MSA Comfr II-M, Norton M, Survivair M A-O-M or Scott-M. Use either of the tests outlined below to assure that the facepiece is properly adjusted.

(1) **Positive pressure test.** With the exhaust port(s) blocked the negative pressure of slight inhalation should remain constant for several seconds.

(2) **Negative pressure test.** With the intake port(s) blocked the negative pressure slight inhalation should remain constant for several seconds.

b. After a facepiece is adjusted, the test subject shall wear the facepiece for at least 5 minutes before conducting a qualitative test by using either of the methods described below and using the exercise regime described in 5.a., b., c., d. and e.

(1) **Isoamyl acetate test.** When using organic vapor cartridges, the test subject who can smell the odor should be unable to detect the odor of isoamyl acetate squirted into the air near the most vulnerable portions of the facepiece seal. In a location which is separated from the test area, the test subject shall be instructed to close her/his eyes during the test period. A combination cartridge or canister with organic vapor and high-efficiency filters shall be used when available for the particular mask being tested. The test subject shall be given an opportunity to smell the odor of isoamyl acetate before the test is conducted.

(2) **Irritant fume test.** When using high-efficiency filters, the test subject should be unable to detect the odor of irritant fume (stannic chloride or titanium tetrachloride ventilation smoke tubes) squirted into the air near the most vulnerable portions of the facepiece seal. The test subject shall be instructed to close her/his eyes during the test period.

c. The test subject may enter the quantitative testing chamber only if she or he has obtained a satisfactory fit by as stated in 4.b. of this Appendix.

d. Before the subject enters the test chamber, a reasonably stable challenge agent concentration shall be measured in the test chamber.

e. Immediately after the subject enters the test chamber, the challenge agent concentration inside the respirator shall be measured to ensure that the peak penetration does not exceed 5 percent for a half-mask and 1 percent for a full facepiece.

f. A stable challenge agent concentration shall be obtained prior to the actual start of testing.

g. Respirator restraining straps may not be overtightened for testing. The straps shall be adjusted by the wearer to give a reasonably comfortable fit typical of normal use.

5. **Exercise Regime.** Prior to entering the test chamber, the test subject shall be given

complete instructions as to her/his part in the test procedures. The test subject shall perform the following exercises, in the order given, for each independent test.

a. **Normal Breathing (NB).** In the normal standing position, without talking, the subject shall breathe normally for at least one minute.

b. **Deep Breathing (DB).** In the normal standing position the subject shall do deep breathing for at least one minute pausing so as not to hyperventilate.

c. **Turning head side to side (SS).** Standing in place the subject shall slowly turn his head from side to side between the extreme positions to each side. The head shall be held at each extreme position for at least 5 seconds. Perform for at least five complete cycles.

d. **Moving head up and down (UD).** Standing in place, the subject shall slowly move his head up and down between the extreme position straight up and the extreme position straight down. The head shall be held at each extreme position for at least 5 seconds. Perform for at least five complete cycles.

e. **Reading (R).** The subject shall read out slowly and loud so as to be heard clearly by the test conductor or monitor. The test subject shall read the "rainbow passage" at the end of this section.

f. **Grimace (G).** The test subject shall grimace, smile, frown, and generally contort the face using the facial muscles. Continue for at least 15 seconds.

g. **Bend over and touch toes (B).** The test subject shall bend at the waist and touch toes and return to upright position. Repeat for at least one minute.

h. **Jogging in place (J).** The test subject shall perform jog in place for at least one minute.

i. **Normal Breathing (NB).** In the normal standing position, without talking, the subject shall breathe normally for at least one minute.

Rainbow Passage

When the sunlight strikes raindrops in the air, they act like a prism and form a rainbow. The rainbow is a division of white light into many beautiful colors. These take the shape of a long round arch, with its path high above, and its two ends apparently beyond the horizon. There is, according to legend, a boiling pot of gold at one end. People look, but no one ever finds it. When a man looks for something beyond reach, his friends say he is looking for the pot of gold at the end of the rainbow.

6. **Termination of Tests.** The test shall be terminated whenever any single peak penetration exceeds 5 percent for half-masks and 1 percent for full facepieces. The test subject may be refitted and retested. If two of the three required tests are terminated, the fit shall be deemed inadequate. (See paragraph 4.h.)

7. **Calculation of Fit Factors.** a. The fit factor determined by the quantitative fit test equals the average concentration inside the respirator.

b. The average test chamber concentration is the arithmetic average of the test chamber

concentration at the beginning and of the end of the test.

c. The average peak concentration of the challenge agent inside the respirator shall be the arithmetic average peak concentrations for each of the nine exercises of the test which are computed as the arithmetic average of the peak concentrations found for each breath during the exercise.

d. The average peak concentration for an exercise may be determined graphically if there is not a great variation in the peak concentrations during a single exercise.

8. *Interpretation of Test Results.* The fit factor measured by the quantitative fit testing shall be the lowest of the three protection factors resulting from three independent tests.

9. *Other Requirements.* a. The test subject shall not be permitted to wear a half-mask or full facepiece if the minimum fit factor of 250 or 1,250, respectively, cannot be obtained. If hair growth or apparel interfere with a satisfactory fit, then they shall be altered or removed so as to eliminate interference and allow a satisfactory fit. If a satisfactory fit is still not attained, the test subject must use a positive-pressure respirator such as powered air-purifying respirators, supplied air respirator, or self-contained breathing apparatus.

b. The test shall not be conducted if there is any hair growth between the skin and the facepiece sealing surface.

c. If a test subject exhibits difficulty in breathing during the tests, she or he shall be referred to a physician to determine whether the test subject can wear a respirator while performing her or his duties.

d. The test subject shall be given the opportunity to wear the assigned respirator for one week. If the respirator does not provide a satisfactory fit during actual use, the test subject may request another QNFT which shall be performed immediately.

e. A respirator fit factor card shall be issued to the test subject with the following information:

- (1) Name.
- (2) Date of fit test.
- (3) Protection factors obtained through each manufacturer, model and approval number of respirator tested.
- (4) Name and signature of the person that conducted the test.

f. Filters used for qualitative or quantitative fit testing shall be replaced weekly, whenever increased breathing resistance is encountered, or when the test agent has altered the integrity of the filter media.

Organic vapor cartridges/canisters shall be

replaced daily or sooner if there is any indication of breakthrough by the test agent.

10. *Retesting.* In addition, because the sealing of the respirator may be affected, quantitative fit testing shall be repeated immediately when the test subject has a:

- (1) Weight change of 20 pounds or more.
- (2) Significant facial scarring in the area of the facepiece seal.
- (3) Significant dental changes; i.e.; multiple extractions without prosthesis, or acquiring dentures.
- (4) Reconstructive or cosmetic surgery, or
- (5) Any other condition that may interfere with facepiece sealing.

11. *Recordkeeping.* a. A summary of all test results shall be maintained for three years.

The summary shall include:

- (1) Name of test subject.
- (2) Date of testing.
- (3) Name of the test conductor.
- (4) Fit factors obtained from every respirator tested (indicate manufacturer, model, size and approval number).

b. A copy of all test data including the strip chart and results shall be kept for at least five years.

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Part III

Office of Personnel Management

**Privacy Act of 1974; Systems of
Records; Notice**

OFFICE OF PERSONNEL MANAGEMENT

Privacy Act of 1974; Publication of Notices of Systems of Records and Proposed New Routine Uses

AGENCY: Office of Personnel Management.

ACTION: Notice; publication of notices of various systems of records, proposed routine uses for various systems of records, and renaming a system of records.

SUMMARY: This notice provides an accurate and complete text with administrative changes of the Office of Personnel Management's notices for its eight Governmentwide systems of records and for two of its most widely used Central systems of records. This notice also proposes new routine uses for several systems of records and proposes a change to one routine use found in all the notices published. This action effects the administrative changes and makes readily available in one issue of the **Federal Register** an accurate and complete text of the Office notices most widely used by individuals and by agency Privacy Act officers.

DATES: The notices with the administrative (non-substantive) changes are effective on August 10, 1992. The proposed routine uses will become effective, without further notice, on October 9, 1992 unless comments dictate otherwise.

ADDRESSES: Written comments may be sent or delivered to: Assistant Director for Workforce Information, Room 7494, U.S. Office of Personnel Management, 1990 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: John Sanet, Privacy Act Advisor (202) 606-1955.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (the Office) last published its systems notices in 1990. To be in conformance with case law, the Office is proposing to amend one of its routine uses found in all of its Governmentwide notices and the two republished Central notices in this publication regarding the disclosing of information when complying with the issuance of a subpoena. As presently written, this routine use allows the system manager to provide information when served with a subpoena, even if the Government is not a party to the litigation or to the administrative proceeding. In light of case law, the Office has decided that the issuance of a subpoena no longer qualifies as a valid routine use and is in opposition to the

allowable disclosures under subsection (b) of the Privacy Act. Therefore, the Office will no longer make disclosures in response to a subpoena unless the Government is a party to the judicial or administrative proceeding. In those situations where the Government is not a party to the proceeding, records may be disclosed if a judge has actually signed the subpoena. In those cases, the disclosure will be made in accordance with subsection (b)(11) of the Privacy Act.

Other changes in this notice result from a more accurate description of the retention schedules, changes in the designation of systems managers and location of records, changes in the title of one system, the slight alteration to the category of records in one system, and the addition of routine uses to specified systems of records.

A brief description of the major changes follows:

OPM/CENTRAL-1, Civil Service Retirement and Insurance Records. Routine use "o" is amended as described above. Disclosures under this routine use will be made to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency when the Government is a party to the judicial or administrative proceeding. Routine use "mm" is proposed to allow the disclosure of information to a State or local government, or private individual or association engaged in volunteer work, for the purpose of developing an application as a representative payee for an annuitant or survivor annuitant who is mentally incompetent or under some other legal disability. This will allow the Office to take a more active role in the development of an appropriate payee when there are incompetent beneficiaries and beneficiaries under other legal disability. The Office has statutory authority under 5 U.S.C. 8345(e) and 5 U.S.C. 8466(c) to pay the benefits to a court-appointed fiduciary or a person who, in the judgment of the Office, is otherwise responsible for the care of the beneficiary.

OPM/CENTRAL-9, Personnel Investigations Records. Routine use "j" has been amended as described above. In addition, the retrievability section has been amended to state that records are retrieved by combinations of name, birth date, and social security numbers of the individual on whom they are maintained.

OPM/GOVT-1, General Personnel Records. Routine use "p" has been amended as described above. Routine use "11" is proposed to respond to an

inquiry from a spouse or dependent child (or court-appointed guardian) of a Federal employee enrolled in the Federal Employees Health Benefits Program, whether the employee has changed from a self-and-family to a self-only health benefits enrollment. In some instances a Federal employee changes health enrollment from a self-and-family plan to a self-only enrollment plan without informing his or her spouse or child(ren). The family members do not know that they are without health coverage until they file a claim and the insurance company will not pay it because the claimant is no longer covered under the Federal employee's policy. To remedy this situation, routine use "11" is proposed. This will enable family members, who have a legitimate right to know whether they do have health coverage, to be advised of this very important information. The retention and disposal section has been modified slightly to delete the reference in paragraph "a" to medical records. Those records are part of the OPM/GOVT-10 system and, therefore, the reference to medical records is not appropriate in this system notice.

OPM/GOVT-2, Employee Performance and File Systems Records. Routine use "i" has been amended as described above.

OPM/GOVT-3, Records of Adverse Actions and Actions Based on Unacceptable Performance. The system name is changed to "Records Based on Adverse Actions and Performance Based Reduction in Grade and Removal Actions." The categories of records section is amended to delete records based on unacceptable performance and to include records involving performance based reduction in grade and removal actions. Routine use "f" has been amended as described above. Routine use "p" is proposed to allow records within this system to be made available to contractors, grantees, or volunteers performing or working on a contract, service, grant, cooperative agreement, or job for the Federal Government. This will enable individuals who do not meet the definition of a Federal employee, but who have a legitimate right to deal with these records in order to accomplish that responsibility, to have access to the records. For example, a student volunteer who is not a Federal employee, but is working in a personnel office and reviews these records technically could not review such records as the volunteer does not come within the "need to know" provision of the Privacy Act (5 U.S.C. 552a(b)(1)). This proposed routine use, which was

added to OPM's other Governmentwide systems of records (OPM/GOVT-1, OPM/GOVT-2, and OPM/GOVT-10) in 1990, is also being added to OPM/GOVT-5 as routine use "r," to OPM/GOVT-6 as routine use "i," to OPM/GOVT-7 as routine use "i," and to OPM/GOVT-9 as routine use "n."

OPM/GOVT-5, Recruiting, Examining, and Placement Records. The title of the office listed in the system location section is changed to reflect the current title. Note 2 in the categories of records section is changed slightly to better state that records filed by vacancy announcement number or some other key that is not a unique personal identifier are not considered to be included in the system of records. Routine use "h" is amended as described above.

OPM/GOVT-6, Personnel Research and Test Validation Records. The system location and system manager identification are changed to reflect the current title. Routine use "f" is changed as described above.

OPM/GOVT-7, Applicant Race, Sex, National Origin, and Disability Status Records. The system location and system manager identification are changed to reflect the current title. Routine use "f" is changed as described above.

OPM/GOVT-9, File on Position Classification Appeals, Job Grading Appeals, and Retained Grade or Pay Appeals. Routine use "f" is amended as described above.

OPM/GOVT-10, Employee Medical File System Records. Routine use "c" is amended as described above. In addition, paragraph "c" of the categories of records section concerning drug test results is amended by deleting the phrase "lists of who has been tested" from this system notice. The Office concludes that a list of employees who have undergone a randomly-assigned drug test is not proper for coverage in a Privacy Act system of records such as OPM/GOVT-10. An individual's drug test result can still be made part of this system of records. The retention and disposal section is amended to indicate that drug test results can be retained for three years which is in accordance with the National Archives and Records Administration General Records Schedule for this type of record.

The new proposed routine uses for the specified systems of records meet the compatibility criteria, since the information involved is collected for the purpose of the applicable routine uses. We anticipate that any disclosures will not result in any unwarranted adverse effects on personal privacy.

A complete text of these ten Office systems of records is published below.

Office of Personnel Management.

Constance Berry Newman,

Director.

OPM/CENTRAL-1

SYSTEM NAME:

Civil Service Retirement and Insurance Records.

SYSTEM LOCATION:

Associate Director for Retirement and Insurance, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415. Certain records pertaining to State income tax withholdings from annuitant payments are located with State Taxing Offices. Certain information concerning enrollment/change in enrollment in a health plan under the Federal Employees Health Benefits Program may be located at other agencies.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

a. Former Federal employees and members of Congress who performed service subject to the Civil Service Retirement (CSR) or Federal Employees Retirement (FERS) system.

b. Current Federal employees who have:

(1) Performed Federal service subject to the CSR system other than with their present agency; or

(2) Filed a designation of beneficiary for benefits payable under the CSR system; or

(3) Requested the Office to review a claim for health benefits made under the Federal Employees Health Benefits Program; or

(4) Enrollment/changed enrollment in a plan under the Federal Employees Health Benefits Program; or

(5) Filed a service credit application in connection with former Federal service; or

(6) Filed an application for disability retirement with the Office and are waiting final decision, or whose disability retirement application has been disapproved by the Office.

c. Former Federal employees who died subject to or who retired under the CSR or FERS system, or their surviving spouses and/or children, who have received or are receiving CSR or FERS benefits, Federal Employees Group Life Insurance benefits, or Federal Employees Health Benefits.

d. Former Federal employees who died subject to or who retired under a Federal Government retirement system other than CSR or FERS system, or their surviving spouses and/or children, who

have received or are receiving Federal Employees Group Life Insurance benefits and/or Federal Employees Health Benefits.

e. Applicants for Federal employment found unsuitable for employment on medical grounds.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system comprises those retirement service history records of employees' service in the Federal Government other than for the agency in which they may presently be employed. Also included in the system are current personnel data pertaining to active United States Postal Service employees who, by virtue of the provisions set forth in 5 U.S.C. 2105(e), are not considered civil service employees. It also contains information concerning health benefit enrollment/change in enrollment, and information developed in support of claims for benefits made under the retirement, health benefits, and life insurance programs for Federal employees that the Office administers. Also included are medical records and supporting evidence on those individuals whose application for disability retirement has been rejected. Consent forms and other records related to the withholding of State income tax from annuitant payments, whether physically maintained by the State or the Office, are included in this system. These records contain the following information:

a. Documentation of Federal service subject to the CSR or FER system.

b. Documentation of service credit and refund claims made under the CSR or FER system.

c. Documentation of voluntary contributions made by eligible individuals.

d. Retirement and death claims files, including documents supporting the retirement application, health benefits and life insurance eligibility, medical records supporting disability claims (after receipt by the Office), and designations of beneficiary.

e. Claim review files pertaining to requests that claims made under the Federal Employees Health Benefits program be reviewed by the Office.

f. Enrollment and change in enrollment information under the Federal Employees Health Benefits Program.

g. Documentation of continuing coverage for life insurance and health benefits for annuitants and their survivors under a Federal Government retirement system other than the CSR or FER system, or for compensationers and

their survivors under the Office of Workers, Compensation Programs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of the system includes the following with any revisions or amendments:

Section 3301 and chapters 83, 84, 87, and 89 of title 5, United States Code; Pub. L. 83-598, 84-358, 86-724, and 94-455; and Executive Order 9397.

PURPOSES:

These records provide information and verification on which to base entitlement and computation of CSR or FER and survivors, benefits, Federal Employees Health Benefits and enrollments, and Federal Employees Group Life Insurance benefits, and to withhold State income taxes from annuitant payments. These records also serve to review rejection of applicants for Federal employment on medical suitability grounds. These records also may be used to locate individuals for personnel research. These records also provide information and verification concerning enrollment/change in enrollment in a plan under the Federal Employees Health Benefits Program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

a. To disclose, to the following recipients, information needed to adjudicate a claim for benefits under the Office's or the recipients' benefits program(s), or information needed to conduct an analytical study of benefits being paid under such programs: Office of Workers Compensation Programs; Veterans Administration Pension Benefits Program; HHS' Social Security Old Age, Survivor and Disability Insurance and Medical Programs, Health Care Financing Administration, and Supplemental Security Income Program; military retired pay programs; Federal civilian employee retirement programs (other than the CSR or FER system); or other national, State, county, municipal, or other publicly recognized charitable or social security administrative agency.

b. To disclose to the Federal Employees Group Life Insurance Office information necessary to verify the election, declination, or waiver of regular and/or optional life insurance coverage or eligibility for payment of a claim for life insurance.

c. To disclose to health insurance carriers contracting with the Office to provide a health benefits plan under the Federal Employees Health Benefits Program, Social Security Numbers, and other information necessary to identify enrollment in a plan, to verify eligibility

for payment of a claim for health benefits, or to carry out the coordination or benefits provisions of such contracts.

d. To disclose to any inquirer, if sufficient information is provided to assure positive identification of an individual on whom a department or agency maintains retirement or insurance records, the fact that an individual is or is not on the retirement rolls, and, if so, the type of annuity (employment or survivor, but not retirement on disability) being paid, or if not, whether a refund has been paid.

e. When an individual to whom a record pertains dies, to disclose to any person possibly entitled in the order of precedence for lump-sum benefits, information in the individual's record that might properly be disclosed to the individual, and the name and relationship of any other person whose claim for benefits takes precedence or who is entitled to share the benefits payable. When a representative of the estate has not been appointed, the individual's next of kin may be recognized as the representative of the estate.

f. To disclose to the Internal Revenue Service, Department of the Treasury, information as required by the Internal Revenue Code of 1954, as amended.

g. To disclose to the Department of the Treasury information necessary to issue benefit checks.

h. To disclose information to any person who is responsible for the care of the individual to whom a record pertains, and who is found by a court or the Office Medical Officers to be incompetent or under other legal disability, information necessary to assure payment of benefits to which the individual is entitled.

i. To disclose to the Parent Locator Service of the Department of Health and Human Services, upon its request, the present address of an annuitant, or former employee, for enforcing child support obligations against such individual.

j. In connection with an examination ordered by the agency under:

(1) Medical examination procedures; or

(2) Agency-filed disability retirement procedures.

To disclose to the agency-appointed representative of an employee all notices, decisions, other written communications, or any pertinent medical evidence other than medical evidence that a prudent physician would hesitate to inform the individual of; such medical evidence will be disclosed only to a licensed physician, designated in

writing for that purpose by the individual or his or her representative.

k. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, when the Office becomes aware of an indication of a violation or potential violation of a civil or criminal law or regulation.

l. To disclose information to any source from which additional information is requested relevant to the Office determination on an individual's eligibility for or entitlement to coverage under the retirement, life insurance, and health benefits program, to the extent necessary to identify the individual and the type of information requested.

m. To disclose information to the Office of Management and Budget at any stage of the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A-19.

n. To disclose information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

o. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency when the Government is a party to the judicial or administrative proceeding.

p. To disclose to a Federal agency, in response to its request, information in connection with (1) the hiring, retention, separation, or retirement of an employee; (2) the issuance of a security clearance; (3) the reporting of an investigation of an employee; (4) the letting of a contract; (5) the classification of a job; or (6) the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the Office determines that the information is relevant and necessary to the requesting party's decision on the matter.

q. By the National Archives and Records Administration in records management and inspections.

r. To provide an official of another Federal agency information needed in the performance of official duties related to reconciling or reconstructing data files, compiling descriptive statistics, and making analytical studies to support the function for which the records were collected and maintained.

s. By the Office, in the production of summary descriptive statistics and analytical studies in support of the function for which the records are

collected and maintained, or for related workforce studies. While published statistics and studies do not contain individual identifiers, in some instances, the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

t. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

u. To disclose to another agency, or to an instrumentality of any governmental jurisdiction within or under the control of the United States, for a civil or criminal law enforcement activity, if the activity is authorized by law and if the head of the agency or instrumentality has made a written request to the Office specifying the particular portion(s) of the record desired (including an address) and the law enforcement activity for which the record is sought.

v. To disclose to a Federal agency, in response to its request, the address of any annuitant or applicant for refund of retirement deductions, if the agency requires that information to provide consideration in connection with the collection of a debt due the United States.

w. To disclose information in valid emergency situations when consent cannot readily be obtained and instant action is required, to persons who have a need to know, if the particulars of the disclosure then are transmitted to the subject's last known address.

x. To disclose information to the Merit Systems Protection Board or the Office of the Special Counsel in connection with appeals, special studies of the civil service and other merit systems, review of Office rules and regulations, investigations of alleged or possible prohibited personnel practices, and such other functions as promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

y. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations into alleged or possible discrimination practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines of Employee Selection Procedures, or other functions vested in the Commission.

z. To disclose information to the Federal Labor Relations Authority or its General Counsel when requested in connection with investigations of allegations of unfair labor practices or

matters before the Federal Service Impasses Panel.

aa. To disclose to a Federal agency, in response to its request, the present address of a former employee and any other information the agency needs to contact the former employee concerning a possible threat to his or her health or safety.

bb. To disclose to an allottee, as defined in 5 CFR 831.1501, the name, address, and the amount withheld from an annuitant's benefits, pursuant to 5 CFR 831.1501 *et seq.* as an allotment to that allottee to implement the program of voluntary allotments authorized by 5 U.S.C. 8345(h) or 8465.

cc. To disclose to a State agency responsible for the collection of State income taxes the information required by an Agreement to Implement State Income Tax Withholdings from Civil Service Annuities entered pursuant to section 1705 of Pub. L. 97-35 or 5 U.S.C. 8469 to implement the program of voluntary State income tax withholding required by 5 U.S.C. 8345(k) or 8469.

dd. To disclose to the Social Security Administration, the social security numbers of civil service annuitants to determine (1) their vital status as shown in the Social Security Master Records; (2) whether recipients of the minimum annuity are receiving at least the Special Primary Insurance Amount benefit from the Social Security Administration; and (3) whether civil service retirees with post-1956 military service credit are receiving benefits from the Social Security Administration.

ee. To disclose to a requesting agency, organization, or individual, the home address and other relevant information on those individuals who, it is reasonably believed, might have contracted an illness, been exposed to, or suffered from, a health hazard while employed in the Federal workforce to protect the health and safety of the affected employees.

ff. To disclose information contained in the Retirement Annuity Master File; including the name, social security number, date of birth, sex, the Office's claim number, health benefit enrollment code, retirement date, retirement code (type of retirement), annuity rate, pay status of case, correspondence address, and ZIP code, of all Federal retirees to agencies to help eliminate fraud and abuse in the benefit programs administered by agencies within the Federal Government and to collect debts and overpayments owed to the Federal Government.

gg. To disclose information contained in the Retirement Annuity Master File, including the name, social security number, date of birth, sex, the Office's

claim number, health benefit enrollment code, retirement date, retirement code (type of retirement), annuity rate, pay status of case, correspondence address, and ZIP code, of all Federal retirees and their survivors to requesting States to help eliminate fraud and abuse in the benefit programs administered by the States (and those States to local governments) and to collect debts and overpayments owed to those governments and their components.

hh. To disclose to a Federal agency, a person or an organization contracting with a Federal agency for rendering collection services within the purview of section 13 of the Debt Collection Act of 1982, in response to a written request from the head of the agency or his or her designee, or from the debt collection contractor, the following data concerning an individual owing a debt to the Federal Government: (1) The debtor's name, address, social security number, and other information necessary to establish the identity of the individual; (2) the amount, status, and history of the claim; and (3) the agency or program under which the claim arose.

ii. To disclose information contained in the Retirement Annuity Master File, upon written request, to State tax administration agencies, for the express purpose of ensuring compliance with State tax obligations by persons receiving benefits under the Civil Retirement System or the Federal Employees Retirement System, and to prevent fraud and abuse, but only the following data elements: Name, correspondence address, date of birth, sex, social security account number, annuity rate, commencing date of benefits, and retirement code (type of retirement).

jj. To disclose information to a State court or administrative agency in connection with a garnishment, attachment, or similar proceeding to enforce an alimony or child support obligation.

kk. To disclose to a former spouse when necessary to explain how that former spouse's benefit under 5 U.S.C. 8341(h), 8345 (j), 8445, or 8467 was computed.

ll. To disclose to a Federal or State agency (or its agent) when necessary to locate individuals who are owed money or property either by a Federal agency, State or local agency, or by a financial institution or similar institution.

mm. To disclose to a State or local government, or private individual or association engaged in volunteer work, identifying and address information and other pertinent facts, for the purpose of developing an application as

representative payee for an annuitant or survivor annuitant who is mentally incompetent or under other legal disability.

DISCLOSURES TO CONSUMER REPORTING AGENCIES:

Disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES OF STORING, RETRIEVING, SAFEGUARDING, AND RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained on magnetic tapes, discs, and in folders.

RETRIEVABILITY:

These records are retrieved by the name, social security number, date of birth, and/or claim number of the individual to whom they pertain.

SAFEGUARDS:

Records are kept in lockable metal file cabinets or in a secured facility with access limited to those whose official duties require access. Personnel screening is employed to prevent unauthorized disclosure.

RETENTION AND DISPOSAL:

All records on a claim for retirement, life insurance, health benefits, and tax withholdings are maintained permanently. Medical suitability records are maintained for 18 months. Requests for review of health benefits claims are maintained up to 3 years. Disposal of manual records is by shredding or burning; magnetic tapes and discs are erased.

SYSTEM MANAGER AND ADDRESS:

Associate Director for Retirement and Insurance, Office of Personnel Management, 1900 E Street, NW., Washington, DC.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire if this system contains information about them should contact the system manager. Individuals must furnish the following information for their records to be located and identified:

- Name, including all former names.
- Date of birth.
- Social security number.
- Name and address of office in which currently and/or formerly employed in the Federal service.

RECORD ACCESS PROCEDURE:

Individuals wishing to request access to their records in this system should

contact the system manager. Individuals must furnish the following information for their records to be located and identified:

- Name, including all former names.
- Date of birth.
- Social security number.
- Name and address of office in which currently and/or formerly employed in the Federal service.
- Annuity, service credit, or voluntary contributions account number, if assigned.

Individuals requesting access must also follow the Office's Privacy Act regulations on verification of identity and access to records (5 CFR part 297).

CONTESTING RECORDS PROCEDURE:

Individuals wishing to request amendment of their records in this system should contact the system manager. Individuals must furnish the following information for their records to be located and identified:

- Name, including all former names.
- Date of birth.
- Social security number.
- Name and address of office in which currently and/or formerly employed in the Federal Service.
- Annuity, service credit, or voluntary contributions account number, if assigned.

Individuals requesting amendment of their records must also follow the Office's Privacy Act regulations regarding verification of identity and amendment of records (5 CFR part 297).

RECORD SOURCE CATEGORIES:

The information in this system is obtained from the following sources:

- The individual to whom the information pertains.
- Agency pay, leave, and allowance records.
- National Personnel Records Center.
- Federal civilian retirement systems other than the CSR/FERS systems.
- Military retired pay system records.
- Office of Workers' Compensation Benefits Program.
- Veterans Administration Pension Benefits Program.
- Social Security Old Age, Survivor, and Disability Insurance and Medicare Programs.
- Health insurance carriers and plans participating in the Federal Employees Health Benefits Programs.
- The Office of Federal Employees Group Life Insurance.
- Office Personnel Folders.
- The individual's co-workers and supervisors.
- Physicians who have examined or treated the individual.
- Former spouse of the individual.

o. State courts or support enforcement agencies.

OPM/CENTRAL-9

SYSTEM NAME:

Personnel Investigations Records.

SECURITY CLASSIFICATION:

None for the system. However, items or records within the system may have national security/foreign policy classifications up through record secret.

SYSTEM LOCATION:

a. Privacy system: Assistant Director for Federal Investigations, Investigations Group, Office of Personnel Management, Washington, DC 20415, and the Federal Records Center, Suitland, Maryland.

b. Decentralized segments: Copies of these records may exist temporarily in agencies on current employees, former employees, or on contractor employees. These copies may be located in the personnel security office or other designated offices responsible for suitability, security clearance, access, or hiring determination on the individual. ("Agency" as used throughout this system is deemed to include legislative and judicial branch establishments as well as those in the Executive Branch.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

a. Current and former employees or applicants for employment in the Federal service, including agency offices or establishments in the executive, legislative, and judicial branches, and in the Government of the District of Columbia or annuitant survivors.

b. American citizens who are current or former employees or applicants for employment with International Organizations.

c. Individuals considered for access to classified information or restricted areas and/or security determinations as contractors, experts, instructors, and consultants to Federal programs.

d. Individuals considered for assignments as representatives of the Federal Government in volunteer programs.

e. Individuals who are neither applicants nor employees of the Federal Government, but who are or were involved in Federal programs under a co-operative assignment or under a similar agreement.

f. Individuals who are neither applicants nor employees of the Federal Government, but who are or were involved in matters related to the administration of the merit system.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain investigative information regarding an individual's character, conduct, and behavior in the community where he or she lives or lived; arrests and convictions for violations against the law; reports of interviews with the subject of the investigation and with the present and former supervisors, co-workers, associates, educators, etc.; reports about the qualifications of an individual for a specific position and correspondence relating to adjudication matters; reports of inquiries with law enforcement agencies, employers, educational institutions attended; reports of action after OPM or FBI Section 8(d) Full Field Investigation; and other information developed from the above.

Note.—This system does not include those agency records of a personnel investigative nature that do not come to the Office of Personnel Management.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The authorities for maintenance of the system include the following with any revisions or amendments:

- a. Section 2, Civil Service Act of 1883—original authority.
- b. Title 5, U.S.C., sections 1303, 1304, 3301, and 7701.
- c. Title 5, CFR, part 5.
- d. Title 22, U.S.C., sections 1434, 2519, and 2585.
- e. Title 32, U.S.C., section 686.
- f. Title 42, U.S.C., sections 1874(c), 2165, and 2455.
- g. Pub. L. 82-298, and 92-261.
- h. Executive Orders 9397, 10422, as amended; 10450, sections 7, 8(b), 8(c), and 14.
- i. OMB Circular No. A-130.
- j. In addition to the authorities cited above, there are various acts of Congress that contain implied authority for the Office to investigate, such as laws prohibiting the purchase and sale of office, holding of two offices, conspiracy and other prohibitory statutes.

PURPOSES:

- a. To provide investigatory information for determinations concerning compliance with Federal personnel regulations and for individual personnel determinations including suitability and fitness for Federal employment, access and security clearances, evaluations of qualifications, loyalty to the United States, and evaluations of qualifications for performance of contractual services for the U.S. Government.
- b. To document such determinations.

c. To provide information necessary for the scheduling and conduct of the required investigations.

d. To otherwise comply with mandates and Executive orders.

e. These records may also be used to locate individuals for personnel research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE FOR SUCH USES:

These records and information in these records may be used in disclosing information:

a. To designated officers and employees of agencies, offices, and other establishments in the executive, legislative, and judicial branches of the Federal Government, having a need to evaluate qualifications, suitability, and loyalty to the United States Government and/or a security clearance or access determination.

b. To designated officers and employees of agencies, offices, and other establishments in the executive, legislative, and judicial branches of the Federal Government, and the District of Columbia Government, when such agency, office, or establishment conducts an investigation of the individual for purposes of granting a security clearance, or for the purpose of making a determination of qualifications, suitability, or loyalty to the United States Government, or access to classified information or restricted areas.

c. To designated officers and employees of agencies, offices, and other establishments in the executive, judicial, or legislative branches of the Federal Government, having the responsibility to grant clearances to make a determination regarding access to classified information or restricted areas, or to evaluate qualifications, suitability, or loyalty to the United States Government, in connection with performance of a service to the Federal Government under a contract or other agreement.

d. To the intelligence agencies of the Department of Defense, the National Security Agency, the Central Intelligence Agency, and the Federal Bureau of Investigation for use in intelligence activities.

e. To any source from which information is requested in the course of an investigation, to the extent necessary to identify the individual, inform the source of the nature and purpose of the investigation, and to identify the type of information requested.

f. To the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or

implementing a statute, rule, regulation, or order where the Office of Personnel Management becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

g. To an agency, office, or other establishment in the executive, legislative, or judicial branches of the Federal Government, or the District of Columbia Government, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

h. To Federal agencies as a data source for management information through the production of summary descriptive statistics and analytical studies in support of the functions for which the records are maintained or for related studies.

i. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

j. To another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Government is a party to the judicial or administrative proceeding.

k. To the National Archives and Records Administration for records management inspections.

l. To the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A-19.

m. To respond to a request for discovery or for appearance of a witness, when relevant to the subject matter involved in a pending judicial or administrative proceeding.

n. To disclose information to the Merit Systems Protection Board or the Office of Special Counsel in connection with appeals, special studies of the civil service and other merit systems, review of Office rules and regulations, investigations of alleged or possible prohibited personnel practices, and such other functions, e.g., as promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

o. To disclose information to the Equal Employment Opportunity Commission when requested in

connection with investigations into alleged or possible discriminatory practices in the Federal sector, examination of Federal affirmative employment program, or other functions vested in the Commission.

p. To disclose information to the Federal Labor Relations Authority or its General Counsel when requested in connection with investigations of allegations or unfair labor practices or matters before the Federal Service Impasses Panel.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDING, AND RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders, in a computerized electronic database, and on microfilm.

RETRIEVABILITY:

Records are retrieved by combinations of name, birth date, and social security number of the individual on whom they are maintained.

SAFEGUARDS:

Folders and microfilm are maintained in secured with manipulation proof combination locks and intrusion alarm systems; or in metal file cabinets secured by three position combination lock. The index to the system and those records which are maintained on the computer database are in a limited access room with a keyless cipher lock. All employees are required to have an appropriate security clearance before they are allowed access to the records.

RETENTION AND DISPOSAL:

a. The computerized data base which shows the scheduling or completion of an investigation and investigative files, if any, is retained for 15 years, plus the current year from the date of the most recent investigative activity, except for investigations involving potentially actionable issue(s) which will be maintained for 25 years plus the current year from the date of the most recent investigative activity. Other index cards which show no investigative record other than the completion of a clear National Agency Check or a clear National Agency Check and Inquiry, and where no investigative file folder exists, are retained for two years plus the current year.

b. Hard copy records are destroyed by burning and computerized records are destroyed by electronic erasure.

SYSTEM MANAGER AND ADDRESS:

a. Assistant Director for Federal Investigations, Investigations Group, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415.

NOTIFICATION PROCEDURES:

Individuals wishing to learn whether this system contains information about them should contact the Federal Investigations Processing Center, FOI/P, Boyers, PA, 16018 in writing.

Individuals must furnish the following for their records to be located and identified:

- Full name.
- Date and place of birth.
- Social Security number.
- Signature.
- Any available information regarding the type of record involved.
- The category of covered individuals under which the requester believes he or she fits.
- The address to which the record information should be sent.

RECORD ACCESS PROCEDURES:

a. Specific materials in this system have been exempted from Privacy Act provisions at 5 U.S.C. 552a(c) (3) and (d), regarding access to records. The section of this notice titled Systems exempted from certain provisions of the Act, which appears below, indicates the kinds of material exempted and the reasons for exempting them from access. Individuals wishing to request access to their records should contact the Federal Investigations Processing Center in writing. Requests should be directed only to the Federal Investigations Processing Center whether the record sought is in the primary system or in an agency's decentralized segment.

Individuals must furnish the following information for their records to be located and identified:

- Full name.
- Date and place of birth.
- Social Security number.
- Signature.
- Any available information regarding the type of record involved.
- The category of covered individuals under which the requester believes he or she fits.
- The address to which the record information should be sent.

Individuals requesting access must also comply with the Office's Privacy Act regulations regarding verification of identity and access to records (5 CFR part 297).

CONTESTING RECORD PROCEDURES:

a. Specific materials in this system have been exempted from Privacy Act provisions at 5 U.S.C. 552a(d), regarding amendment to records. The section of this notice titled Systems exempted from certain provisions of the Act, which appears below, indicates the kinds of material exempted and the reasons for exempting them from amendment.

Individuals wishing to request amendment to their non-exempt records should contact the Federal Investigations Center in writing. Requests should be directed only to the Federal Investigations Processing Center, whether the record sought is in the primary system or in agency's decentralized segment.

Individuals must furnish the following information for their records to be located and identified:

- Full Name.
- Date and place of birth.
- Social Security Number.
- Signature.
- Any information regarding the type of record involved.
- The category of covered individuals under which the requester believes he or she fits.

Individuals requesting amendment must also comply with the Office's Privacy Act regulations regarding verification of identity and amendment of records (5 CFR part 297).

Note.—Where an agency retains the decentralized copy of the investigative report provided by OPM, requests for access to or amendment of such reports, will be forwarded to the Federal Investigations Processing Center for processing.

RECORD SOURCE CATEGORIES:

Information contained in the system is obtained from the following categories of sources:

- Applications and other personnel and security forms and personal interview furnished by the individual.
- Investigative and other record material furnished by Federal agencies.
- Notices of personnel actions furnished by Federal agencies.
- By personal investigation or written inquiry from sources such as employers, educational institutions, references, neighbors, associates, police departments, courts, credit bureau, medical records, probation officials, prison officials, newspapers, magazines, periodicals, and other publications.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system may contain the following types of information:

- Properly classified information, obtained from another Federal agency during the course of a personnel investigation, which pertains to national defense and foreign policy. The Privacy Act, at 5 U.S.C. 552a(k)(1), permits an agency to exempt such materials from certain provisions of the Act.
- Investigatory material compiled for law enforcement purposes in connection with the administration of the merit

system. The Privacy Act, at U.S.C. 552a(k)(2), permits an agency to exempt such material from certain provisions of the Act.

c. Investigatory material maintained in connection with providing protective services to the President of the United States or other individuals pursuant to section 3056 of title 18 of the U. S. Code. The Privacy Act, at 5 U.S.C. 552a(k)(3), permits an agency to exempt such material from certain provisions of the Act.

d. Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment and Federal contact or access to classified information. The Privacy Act, at 5 U.S.C. 552a(k)(5), permits an agency to exempt such material from certain provisions of the Act. Materials may be exempted to the extent that release of the material to the individual whom the information is about would:

(1) Reveal the identity of a source who furnished information to the Government under an express promise (granted on or after September 27, 1975) that the identity of the source would be held in confidence; or,

(2) Reveal the identity of a source who, prior to September 27, 1975, furnished information to the Government under an implied promise that the identity of the source would be held in confidence.

e. Testing and examination materials, compiled during the course of a personnel investigation, that are used solely to determine individual qualifications for appointment or promotion in the Federal service. The Privacy Act at 5 U.S.C. 552a(k)(6) permits an agency to exempt all such testing and examination material and information from certain provisions of the Act, when disclosure of the material would compromise the objectivity or fairness of the testing or examination process.

The Office of Personnel Management has claimed these examinations from the requirements of 5 U.S.C. 552a(c)(3) and (d). These requirements relate to providing an accounting of disclosures to the individual who the records are about and access to and amendment of the records.

OPM/GOVT-1

SYSTEM NAME:

General Personnel Records.

SYSTEM LOCATION:

Records on current Federal employees are located at the Office and with Personnel Officers or other designated

offices of the local installation of the department or agency that currently employs the individual. When agencies determine that duplicates of these records need to be located in a second office, e.g., an administrative office closer to where the employee actually works, such copies are covered by this system. Former Federal employees' Official Personnel Folders (OPF) are located at the National Personnel Records Center, National Archives and Records Administration, 111 Winnebago Street, St. Louis, Missouri 63118. Records not considered long-term records, but which may be retained in the OPF or elsewhere during employment, and which are also included in this system, may be retained by agencies for a period of time after the employee leaves service. The use of the phrase "long-term" to describe those records filed on the right-hand-side of OPFs is used throughout this notice because these records are not actually permanently retained. The term "temporary" is used when referencing short-term records filed on the left-hand-side of OPFs and all other records not filed in the OPF, but covered by this notice.

Note 1.—The records in this system are "owned" by the Office of Personnel Management (Office) and should be provided to those Office employees who have an official need or use for those records. Therefore, if an employing agency is asked by an Office employee to access the records within this system, such a request should be honored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Federal employees as defined in 5 U.S.C. 2105.

CATEGORIES OF RECORDS IN THE SYSTEM:

All categories of records may include identifying information, such as name(s), date of birth, home address, mailing address, social security number, and home telephone. This system includes contents of the OPF as specified in Federal Personnel Manual Supplement 293-31. Records in this system are—

a. Records reflecting work experience, educational level achieved, and specialized education or training obtained outside of Federal service.

b. Records reflecting Federal service and documenting work experience and specialized education or training received while employed. Such records contain information about past and present positions held; grades; salaries; duty station locations; and notices of all personnel actions, such as appointments, transfers, reassignments, details, promotions, demotions, reductions-in-force, resignations, separations, suspensions, Office

approval of disability retirement applications, retirement, and removals.

c. Records on enrollment or declination of enrollment in the Federal Employees' Group Life Insurance Program and Federal Employees Health Benefit Program, as well as forms showing designation of beneficiary.

d. Records relating to an Intergovernmental Personnel Act assignment or Federal-private sector exchange program.

Note 2.—Some of these records may also become part of the OPM/CENTRAL-5, Intergovernmental Personnel Act Assignment Record system.

e. Records relating to participation in an agency Federal Executive or SES Candidate Development Program.

Note 3.—Some of these records may also become part of the OPM/CENTRAL-3, Federal Executive Development Records; or OPM/CENTRAL-13, Senior Executive Service Records systems.

f. Records relating to Government-sponsored training or participation in an agency's Upward Mobility Program or other personnel program designed to broaden an employee's work experiences and for purposes of advancement (e.g., an administrative intern program).

g. Records contained in the Central Personnel Data File (CPDF) maintained by OPM and exact substantive representations in agency manual or automated personnel information systems. These data elements include many of the above records along with handicap and race and national origin codes. A definitive list of CPDF data elements is contained in Federal Personnel Manual Supplement 292-1.

h. Records on the Senior Executive Service (SES) maintained by agencies for use in making decisions affecting incumbents of these positions, e.g., relating to sabbatical leave programs, training, reassignments, and details, that are perhaps unique to the SES and that may be filed in the employee's OPF. These records may also serve as the basis for reports submitted to OPM for implementing OPM's oversight responsibilities concerning the SES.

i. Records on an employee's activities on behalf of the recognized labor organization representing agency employees, including accounting of official time spent and documentation in support of per diem and travel expenses.

Note 4.—Alternatively, such records may be retained by an agency payroll office and thus be subject to the agency's internal Privacy Act system for payroll records. The OPM/GOVT-1 system does not cover general agency payroll records.

j. To the extent that the records listed here are also maintained in an agency automated personnel or microform records system, those versions of these records are considered to be covered by this system notice. Any additional copies of these records (excluding performance appraisal and conduct-related documents maintained by first line supervisors and managers covered by the OPM/GOVT-2 system) maintained by agencies at field/administrative offices remote from where the original records exist are considered part of this system.

Note 5.—It is not the intent of OPM to limit this system of records only to those records physically within the OPF. Records may be filed in other folders located in offices other than where the OPF is located. Further, as indicated in the records location section, some of these records may be duplicated for maintenance at a site closer to where the employee works (e.g., in an administrative office or supervisors work folder) and still be covered by this system.

k. Records relating to designations for lump sum death benefits.

l. Records relating to classified information nondisclosure agreements.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of the system includes the following with any revisions or amendments:

5 U.S.C. 1302, 2951, 3301, 3372, 4118, 8347, and Executive Orders 9397, 9830, and 12107.

PURPOSES:

The OPF and other general personnel records files are the official repository of the records, reports of personnel actions, and the documents and papers required in connection with these actions effected during an employee's Federal service. The personnel action reports and other documents, some of which are filed as long-term records in the OPF, give legal force and effect to personnel transactions and establish employee rights and benefits under pertinent laws and regulations governing Federal employment.

These files and records are maintained by OPM and the agencies for the Office in accordance with Office regulations and instructions. They provide the basic source of factual data about a person's Federal employment while in the service and after his or her separation. Records in this system have various uses by agency personnel offices, including screening qualifications of employees; determining status, eligibility, and employee's rights and benefits under pertinent laws and regulations governing Federal

employment; computing length of service; and other information needed to provide personnel services. These records and their automated or microform equivalents may also be used to locate individuals for personnel research.

Temporary documents on the left side of the OPF may pertain to a formal action but do not constitute a record of it nor make a substantial contribution to the employee's long-term record.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEMS, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used—

a. To disclose information to Government training facilities (Federal, State, and local) and to non-Government training facilities (private vendors of training courses or programs, private schools, etc.) for training purposes.

b. To disclose information to education institutions on appointment of a recent graduate to a position in the Federal service, and to provide college and university officials with information about their students working under Cooperative Education, Volunteer Service, or other similar programs necessary to a student's obtaining credit for the experience gained.

c. To disclose information to officials of foreign governments for clearance before a Federal employee is assigned to that country.

d. To disclose information to the Department of Labor, Department of Veterans Affairs, Social Security Administration, Department of Defense, or any other Federal agencies that have special civilian employee retirement programs; or to a national, State, county, municipal, or other publicly recognized charitable or income security, administration agency (e.g., State unemployment compensation agencies), when necessary to adjudicate a claim under the retirement, insurance, unemployment, or health benefits programs of the Office or an agency cited above, or to an agency to conduct an analytical study or audit of benefits being paid under such programs.

e. To disclose to the Office of Federal Employees Group Life Insurance, information necessary to verify election, declination, or waiver of regular and/or optional life insurance coverage, eligibility for payment of a claim for life insurance, or to TSP election change and designation of beneficiary.

f. To disclose, to health insurance carriers contracting with the Office to provide a health benefits plan under the Federal Employees Health Benefits Program, information necessary to

identify enrollment in a plan, to verify eligibility for payment of a claim for health benefits, or to carry out the coordination or audit of benefit provisions of such contracts.

g. To disclose information to a Federal, State, or local agency for determination of an individual's entitlement to benefits in connection with Federal Housing Administration programs.

h. To consider and select employees for incentive awards and other honors and to publicize those granted. This may include disclosure to other public and private organizations, including news media, which grant or publicize employee recognition.

i. To consider employees for recognition through quality-step increases, and to publicize those granted. This may include disclosure to other public and private organizations, including news media, which grant or publicize employee recognition.

j. To disclose information to officials of labor organizations recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

k. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, when the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

l. To disclose information to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested), when necessary to obtain information relevant to an agency decision to hire or retain an employee, issue a security clearance, conduct a security or suitability investigation of an individual, classify jobs, let a contract, or issue a license, grant, or other benefits.

m. To disclose to a Federal agency in the executive, legislative, or judicial branch of government, in response to its request, or at the initiation of the agency maintaining the records, information in connection with the hiring of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, the issuance of a license, grant, or other benefits by the requesting agency, or the lawful

statutory, administrative, or investigative purpose of the agency to the extent that the information is relevant and necessary to the requesting agency's decision.

n. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A-19.

o. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual.

p. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Government is a party to the judicial or administrative proceeding.

q. To disclose information to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the agency is authorized to appear, when:

1. The agency, or any component thereof; or

2. Any employee of the agency in his or her official capacity; or

3. Any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or

4. The United States, when the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the agency is deemed by the agency to be relevant and necessary to the litigation provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

r. By the National Archives and Records Administration in records management inspections and its role as Archivist.

s. By the agency maintaining the records or by the Office to locate individuals for personnel research or survey response, and in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related workforce studies. While published statistics and studies do not contain individual identifiers, in some instances, the selection of elements of data included in the study may be structured

in such a way as to make the data individually identifiable by inference.

t. To provide an official of another Federal agency information needed in the performance of official duties related to reconciling or reconstructing data files, in support of the functions for which the records were collected and maintained.

u. When an individual to whom a record pertains is mentally incompetent or under other legal disability, information in the individual's record may be disclosed to any person who is responsible for the care of the individual, to the extent necessary to assure payment of benefits to which the individual is entitled.

v. To disclose to the agency-appointed representative of an employee all notices, determinations, decisions, or other written communications issued to the employee, in connection with an examination ordered by the agency under—

(1) Fitness-for-duty examination procedures; or

(2) Agency-filed disability retirement procedures.

w. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

x. To disclose to a requesting agency, organization, or individual the home address and other relevant information on those individuals who it reasonably believed might have contracted an illness or might have been exposed to or suffered from a health hazard while employed in the Federal workforce.

y. To disclose specific civil service employment information required under law by the Department of Defense on individuals identified as members of the Ready Reserve to assure continuous mobilization readiness of Ready Reserve units and members, and to identify demographic characteristics of civil service retirees for national emergency mobilization purposes.

z. To disclose information to the Department of Defense, National Oceanic and Atmospheric Administration, U.S. Public Health Service, Department of Veterans Affairs, and the U.S. Coast Guard needed to effect any adjustments in retired or retained pay required by the dual compensation provisions of section 5532 of title 5, United States Code.

aa. To disclose information to the Merit Systems Protection Board or the Office of the Special Counsel in connection with appeals, special studies of the civil service and other merit systems, review of Office rules and

regulations, investigation of alleged or possible prohibited personnel practices, and such other functions promulgated in 5 U.S.C. 1205 and 1206 or as may be authorized by law.

bb. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations of alleged or possible discrimination practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures, or other functions vested in the Commission.

cc. To disclose information to the Federal Labor Relations Authority (including its General Counsel) when requested in connection with investigation and resolution of allegations of unfair labor practices, in connection with the resolution of exceptions to arbitrator's awards when a question of material fact is raised, and in connection with matters before the Federal Service Impasses Panel.

dd. To disclose to prospective non-Federal employers, the following information about a specifically identified current or former Federal employee:

(1) Tenure of employment;

(2) Civil service status;

(3) Length of service in the agency and the Government; and

(4) When separated, the date and nature of action as shown on the Notification of Personnel Action—Standard Form 50 (or authorized exception).

ee. To disclose information on employees of Federal health care facilities to private sector (i.e., other than Federal, State, or local government) agencies, boards, or commissions (e.g., the Joint Commission on Accreditation of Hospitals). Such disclosures will be made only when the disclosing agency determines that it is in the Government's best interest (e.g., to comply with law, rule, or regulation, to assist in the recruiting of staff in the community where the facility operates or to avoid any adverse publicity that may result from public criticism of the facility's failure to obtain such approval, or to obtain accreditation or other approval rating). Disclosure is to be made only to the extent that the information disclosed is relevant and necessary for that purpose.

ff. To disclose information to any member of an agency's Performance Review Board or other panel when the member is not an official of the employing agency; information would

then be used for approving or recommending selection of candidates for executive development or SES candidate programs, issuing a performance appraisal rating, issuing performance awards, nominating for meritorious and distinguished executive ranks, and removal, reduction-in-grade, and other personnel actions based on performance.

gg. To disclose, either to the Federal Acquisition Institute (FAI) or its agent, information about Federal employees in procurement occupations and other occupations whose incumbents spend the predominant amount of their work hours on procurement tasks; provided that the information shall only be used for such purposes and under such conditions as prescribed by the notice of the Federal Acquisition Personnel Information System as published in the Federal Register of February 7, 1980 (45 FR 8399).

hh. To disclose relevant information with personal identifiers of Federal civilian employees whose records are contained in the Central Personnel Data File to authorized Federal agencies and non-Federal entities for use in computer matching. The matches will be performed to help eliminate waste, fraud, and abuse in Governmental programs; to help identify individuals who are potentially in violation of civil or criminal law or regulation; and to collect debts and overpayments owed to Federal, State, or local governments and their components. The information disclosed may include, but is not limited to, the name, social security number, date of birth, sex, annualized salary rate, service computation date of basic active service, veteran's preference, retirement status, occupational series, health plan code, position occupied, work schedule (full time, part time, or intermittent), agency identifier, geographic location (duty station location), standard metropolitan service area, special program identifier, and submitting office number of Federal employees.

ii. To disclose information to Federal, State, local, and professional licensing boards, Boards of Medical Examiners, or to the Federation of State Medical Boards or a similar non-government entity which maintains records concerning individuals' employment histories or concerning the issuance, retention or revocation of licenses, certifications or registration necessary to practice an occupation, profession or specialty, in order to obtain information relevant to an Agency decision concerning the hiring retention or termination of an employee or to inform

a Federal agency or licensing boards of the appropriate non-government entities about the health care practices of a terminated, resigned or retired health care employee whose professional health care activity so significantly failed to conform to generally accepted standards of professional medical practice as to raise reasonable concern for the health and safety of patients in the private sector or from another Federal agency.

jj. To disclose information to contractors, grantees, or volunteers performing or working on a contract, service, grant, cooperative agreement, or job for the Federal Government.

kk. To disclose information to a Federal, State, or local governmental entity or agency (or its agent) when necessary to locate individuals who are owed money or property either by a Federal, State, or local agency, or by a financial or similar institution.

ll. To disclose to a spouse or dependent child (or court-appointed guardian thereof) of a Federal employee enrolled in the Federal Employees Health Benefits Program, upon request, whether the employee has changed from a self-and-family to a self-only health benefits enrollment.

POLICIES AND PRACTICES OF STORING, RETRIEVING, SAFEGUARDING, AND RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders, on lists and forms, microfilm or microfiche, and in computer processable storage media.

RETRIEVABILITY:

These records are retrieved by various combinations of name, birth date, social security number, or identification number of the individual on whom they are maintained.

SAFEGUARDS:

Paper or microfiche/microfilmed records are located in locked metal file cabinets or in secured rooms with access limited to those personnel whose official duties require access. Access to computerized records is limited, through use of access codes and entry logs, to those whose official duties require access.

RETENTION AND DISPOSAL:

The OPF is maintained for the period of the employee's service in the agency and is then transferred to the National Personnel Records Center for storage or, as appropriate, to the next employing Federal agency. Other records are either retained at the agency for various lengths of time in accordance with the

National Archives and Records Administration records schedules or destroyed when they have served their purpose or when the employee leaves the agency.

a. Long-term records. The OPF is maintained by the employing agency as long as the individual is employed with that agency.

For non-SES employees, transfer performance ratings of record 4 years old or less and the performance plan on which the most recent rating was based from the Employee Performance File to the OPF, if the ratings and plans are not maintained by the agency in the OPF.

Within 90 days after the individual separates from the Federal service, the OPF is sent to the National Personnel Records Center for long-term storage. In the case of administrative need, a retired employee, or an employee who dies in service, the OPF is sent to the Records Center within 120 days.

Destruction of the OPF is in accordance with General Records Schedule (GRS-1).

b. Other records. Other records are retained for varying periods of time. Generally they are maintained for a minimum of 1 year or until the employee transfers or separates.

c. Records contained on computer processable media within the CPDF (and in agency's automated personnel records) may be retained indefinitely as a basis for longitudinal work history statistical studies. After the disposition date in GRS-1, such records should not be used in making decisions concerning employees.

SYSTEM MANAGER AND ADDRESS:

Assistant Director for Workforce Information, Personnel Systems and Oversight Group, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the appropriate Office or employing agency office, as follows:

a. Current Federal employees should contact the Personnel Officer or other responsible official (as designated by the employing agency), of the local agency installation at which employed regarding records in this system.

b. Former Federal employees should contact the Office's St. Louis office (address cited in "Records Access Procedure" below), or as explained in the Note in the "Records Access Procedure" below, the National Personnel Records Center (Civilian), 111

Winnebago Street, St. Louis, Missouri 63118, regarding the records in this system.

Individuals must furnish the following information for their records to be located and identified:

- Full name(s).
- Date of birth.
- Social security number.
- Last employing agency (including duty station) and approximate date(s) of the employment (for former Federal employees).
- Signature.

RECORD ACCESS PROCEDURE:

Individuals wishing to request access to their records should contact the appropriate OPM or agency office, as specified in the Notification Procedure section. Individuals must furnish the following information for their records to be located and identified:

- Full name(s).
- Date of birth.
- Social security number.
- Last employing agency (including duty station) and approximate date(s) of employment (for former Federal employees).
- Signature.

Individuals requesting access must also comply with the Office's Privacy Act regulations on verification of identity and access to records (5 CFR 297).

Note 6.—An individual who is a former Federal employee may direct a request to the National Personnel Records Center (NPRC) for a copy of a specific OPF document or for a transcript of his or her own employment history compiled from documents in the OPF. The transcript includes the individual's name; date of birth; social security number; all past grades held, position titles, duty stations, and salaries; and dates of personnel actions.

Under no circumstances shall an individual direct a request to NPRC for access to copies of all records maintained in his or her OPF. Though NPRC stores and services the OPFs of former Federal employees covered by this system, that record remains the property of the Office, and such requests will be handled and processed by the: OPF/EMF Access Unit, Office of Personnel Management, P.O. Box 18673, St. Louis, Missouri 63118.

CONTESTING RECORD PROCEDURE:

Current employees wishing to request amendment of their records should contact their current agency. Former employees should contact the system manager and not the Office. Individuals must furnish the following information for their records to be located and identified.

- Full name(s).

b. Date of birth.

c. Social security number.

d. Last employing agency (including duty station) and approximate date(s) of employment (for former Federal employees).

e. Signature.

Individuals requesting amendment must also comply with the Office's Privacy Act regulations on verification of identity and amendment of records (5 CFR 297).

Note 7.—Under no circumstances shall former employees direct a request for amendment to records in the OPF to the NPRC or to the Office's OPF/EMF Access unit in St. Louis, Missouri. NPRC only stores and services the OPFs on former Federal employees covered by this system, and the Office's office in St. Louis processes only access requests. Processing under the amendment provisions of the Privacy Act will be handled only by the system manager.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by—

- The individual on whom the record is maintained.
- Physicians examining the individual.
- Educational institutions.
- Agency officials and other individuals or entities.
- Other sources of information for long-term records maintained in an employee's OPF, in accordance with Federal Personnel Manual, Chapter 293, and the Federal Personnel Supplement 293-31.

OPM/GOVT-2

SYSTEM NAME:

Employee Performance File System Records.

SYSTEM LOCATION:

Records maintained in this system may be located as follows:

a. In an Employee Performance File (EPF) maintained in the agency office responsible for maintenance of the employee's Official Personnel Folder (OPF) or other agency-designated office. This includes those instances where the agency uses an envelope within the OPF in lieu of a separate EPF folder.

b. In the EPF of Senior Executive Service (SES) appointees where the agency elects to have the file maintained by the Performance Review Boards required by 5 U.S.C. 4314(c)(1), or the administrative office supporting the Board.

c. In any supervisor/manager's work folder maintained in the office by the employee's immediate supervisor/manager or, where agencies have determined that records management is

better served, in such folders maintained for supervisors/managers in a central administrative office.

d. In an agency's automated personnel records system.

e. In an agency microformed EPF.

Note 1.—Originals or copies of records covered by this system may be located in more than one location, but if they become part of an agency internal system (e.g., administrative or negotiated grievance file), those copies then would be subject to the agency's internal Privacy Act implementation guidance regarding their use within the agency's system.

Note 2.—The records in this system are "owned" by the Office of Personnel Management (Office) and should be provided to those Office employees who have an official need or use for those records. Therefore, if an employing agency is asked by an Office employee for access to the records within this system, such a request should be honored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Federal employees (including SES appointees).

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system, wherever they are maintained, may include any or all of the following:

a. Annual summary performance appraisals issued under employee appraisal systems and any document that indicates that the appraisal is being challenged under administrative procedures (e.g., when the employee files a grievance on the appraisal received).

b. A document (either the summary appraisal form itself or a form affixed to it) that identifies the job elements and the standards for those elements upon which the appraisal is based.

c. Supporting documentation for employee appraisals, as required by agency appraisal systems or implementing instructions, and which may be filed physically with the appraisal of record (e.g., productivity and quality control records, records of employee counseling, individual development plans, or other such records as specified in agency issuances) and maintained, for example in a work folder by supervisors/managers at the work site.

d. Records on SES appraisals generated by Performance Review Boards, including statements of witnesses and transcripts of hearings.

e. Written recommendations for awards, removals, demotions, denials of within-grade increases, reassignments, training, pay increases, cash bonuses, or other performance-based actions (e.g.,

nominations of SES employees for Meritorious or Distinguished Executive), including supporting documentation.

f. Statements made (letter on or appended to the performance appraisal document) by the employee (e.g., a statement of disagreement with the appraisal or recommendation), in accordance with agency performance appraisal plans and implementing instructions, regarding an appraisal given and any recommendations made based on them.

Note 3.—When a recommendation by a supervisor/manager or a statement made by the employee regarding the appraisal issued (or a copy) becomes part of another Governmentwide system or internal agency file (e.g., an SF 52 filed in an OPF when the action is effected or when documents or statements of disagreement are placed in a grievance file), that document then becomes subject to that system's notice and appropriate Office or employing agency Privacy Act requirements, respectively, for the system of records covering that file.

g. Records created by Executive Resource Boards regarding performance of an individual in an executive development program.

h. Records concerning performance during the supervisory or managerial probationary period, the SES appointment probationary period, or the employee's initial period of probation after appointment.

i. Notices of commendations (which are not considered a permanent OPF document), recommendations for training, such as an Individual Development Plan, and advice and counseling records that are based on work performance.

j. Copies of supervisory appraisals used in considering employees for promotion or other position changes originated in conjunction with agency merit promotion programs when specifically authorized for retention in the EPF or work folder.

k. Performance-related material that may be maintained in the work folder to assist the supervisor/manager in accurately assessing employee performance. Such material may include transcripts of employment and training history, documentation of special licenses, certificates, or authorizations necessary in the performance of the employee duties, and other such records that agencies determine to be appropriate for retention in the work folder.

l. Standard Form 7B cards.

Note 4.—To the extent that performance records covered by this system are maintained in either an EPF, supervisor/manager work folder, or an agency's automated or microform record system, they are considered covered under this system of

records. Further, when copies of records filed in the employee's OPF are maintained as general records related to performance (item k above), those records are to be considered as being covered by this system and not the OPM/GOVT-1 system.

This notice does not cover these records (or copies) when they become part of a grievance file or a 5 CFR parts 432, 752, or 754 file (documents maintained in these files are covered by the OPM/GOVT-3 system of records, while grievance records are covered under an agency-specific system), or when they become part of an appeal or discrimination complaint file as such documents are considered to be part of either the system of appeal records under the control of the Merit Systems Protection Board (MSPB) or discrimination complaints files under the control of the Equal Employment Opportunity Commission (EEOC).

When an agency retains copies of records from this system in another system of records, not covered by this or another OPM, MSPB, or EEOC Governmentwide system notice, the agency is solely responsible for responding to any Privacy Act issues raised concerning these documents.

The Office has adopted a position that when supervisors/managers retain personal "supervisory" notes, i.e., information on employees that the agency exercises no control and does not require or specifically describe in its performance appraisal system, which remain solely for the personal use of the author and are not provided to any other person, and which are retained or discarded at the author's sole discretion, such notes are not subject to the Privacy Act and are, therefore, not considered part of this system. Should an agency choose to adopt a position that such notes are subject to the Act, that agency is solely responsible for dealing with Privacy Act matters, including the requisite system notice, concerning them.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of the system includes the following with any revisions or amendments:

Sections 1104, 3321, 4305, and 5405 of title 5, U.S. Code, and Executive Order 12107.

PURPOSE:

These records are maintained to ensure that all appropriate records on an employee's performance are retained and are available (1) to agency officials having a need for the information; (2) to employees; (3) to support actions based on the records; (4) for use by the Office in connection with its personnel management evaluation role in the executive branch; and (5) to identify individuals for personnel research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

a. To disclose information to the Merit Systems Protection Board or the Office of Special Counsel in connection with

appeals, special studies of the civil service and other merit systems, review of Office rules and regulations, investigations of alleged or possible prohibited personnel practices, and other functions as promulgated in 5 U.S.C. 1205, 1206, and 1209 or for such other functions as may be authorized by law.

b. To disclose information to the EEOC when requested in connection with investigations into alleged or possible discrimination practices in the Federal sector, examination of Federal Affirmative Action programs, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures, or other functions vested in the Commission.

c. To disclose information to the Federal Labor Relations Authority (including its General Counsel) when requested in connection with the investigation and resolution of allegations of unfair labor practices, in connection with the resolution of exceptions to arbitrator's awards where a question of material fact is raised, and matters before the Federal Service Impasses Panel.

d. To consider and select employees for incentive awards, quality-step increases, merit increases and performance awards, or other pay bonuses, and other honors and to publicize those granted. This may include disclosure to public and private organizations, including news media, which grant or publicize employee awards or honors.

e. To disclose information to an arbitrator to resolve disputes under a negotiated grievance procedure or to officials of labor organizations recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation.

f. To disclose to an agency in the executive, legislative, or judicial branch, or to the District of Columbia's government in response to its request, or at the initiation of the agency maintaining the records, information in connection with hiring or retaining of an employee; issuing a security clearance; conducting a security or suitability investigation of an individual; classifying jobs; letting a contract; issuing a license, grant, or other benefits by the requesting agency; or the lawful statutory, administrative, or investigative purposes of the agency to the extent that the information is relevant and necessary to the decision on the matter.

g. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to

the subject matter involved in a pending judicial or administrative proceeding.

h. To disclose information to a congressional office from the record or an individual in response to an inquiry from that congressional office made at the request of the individual.

i. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Government is a party to the judicial or administrative proceeding.

j. To disclose information to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the agency is authorized to appear, when:

1. The agency, or any component thereof; or
2. Any employee of the agency in his or her official capacity; or
3. Any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or
4. The United States, when the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the agency is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

k. By the National Archives and Records Administration in records management inspections and its role as Archivist.

l. By the Office or employing agency to locate individuals for personnel research or survey response and in producing summary descriptive statistics and analytical studies to support the function for which the records are collected and maintained, or for related workforce studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

m. To disclose pertinent information to the appropriate Federal, State, or local government agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the agency maintaining the record becomes aware of an

indication of a violation or potential violation of civil or criminal law or regulation.

n. To disclose information to private sector (i.e., non-Federal, State, or local government) agencies, organizations, boards, bureaus, or commissions. Such disclosures may be made only when the disclosing agency determines that the records are properly constituted in accordance with the Office or agency requirements; are accurate, relevant, timely, and complete; and the disclosure is in the best interest of the Government (e.g., where the agency's cooperation with the private sector entity, through the exchange of individual records, directly benefits the agency's completion of its mission, enhances the agency's personnel management functions, or increases the public confidence in the agency's or the Federal Government's role in the community). Further, only such information that is clearly relevant and necessary for accomplishing the intended uses of the information as certified by the receiving private sector entity, are to be furnished.

o. To disclose information to any member of an agency's Performance Review Board or other board or panel when the member is not an official of the employing agency. The information would then be used for approving or recommending performance awards, nominating for meritorious and distinguished executive ranks, and removal, reduction-in-grade, and other personnel actions based on performance.

p. To disclose to Federal, State, local, and professional licensing boards or Boards of Medical Examiners, when such records reflect on the qualifications of an individual seeking to be licensed.

q. To disclose to contractors, grantees, or volunteers performing or working on a contract, service, grant, cooperative agreement, or job for the Federal Government.

POLICIES AND PRACTICES OF STORING, RETRIEVING, SAFEGUARDING, AND RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders, envelopes, and on magnetic tapes, disks, microfilm, or microfiche.

RETRIEVABILITY:

Records are retrieved by the name and social security number of the individual on whom they are maintained.

SAFEGUARDS:

Records are maintained in file folders or envelopes, on magnetic tape, disks, or

microforms and are stored in locked desks, metal filing cabinets, or in a secured room with access limited to those whose official duties require access. Additional safeguarding procedures include the use of sign-out sheets and restrictions on the number of employees able to access automated records through use of access codes and logs.

RETENTION AND DISPOSAL:

Records on former non-SES employees will generally be retained no longer than 1 year after the employee leaves his or her employing agency. Records on former SES employees may be retained up to 5 years under 5 U.S.C. 4314.

a. Summary performance appraisals (and related records as the agency prescribes) on SES appointees are retained for 5 years and on other employees for 4 years, except as shown in paragraph b below, and are disposed of by shredding, burning, erasing of disks, or in accordance with agency procedures regarding destruction of personnel records, including giving them to the individual.

b. Appraisal of unacceptable performance and related documents, pursuant to 5 U.S.C. 4303(d), are destroyed after the employee completes 1 year of acceptable performance from the date of the proposed removal or reduction-in-grade notice. (Destruction to be no later than 30 days after the year is up.)

c. When a career appointee in the SES accepts a Presidential appointment pursuant to 5 U.S.C. 3392(c), the employee's performance folder remains active so long as the employee remains employed under the Presidential appointment and elects to have certain provisions of 5 U.S.C. relating to the Service apply.

d. When an incumbent of the SES transfers to another position in the Service, ratings and plans 5 years old or less shall be forwarded to the gaining agency with the individual's OPF.

e. Some performance-related records (e.g., documents maintained to assist rating officials in appraising performance or recommending remedial actions or to show that the employee is currently licensed or certified) may be destroyed after 1 year.

f. Where any of these documents are needed in connection with administrative or negotiated grievance procedures, or quasi-judicial or judicial proceedings, they may be retained as needed beyond the retention schedules identified above.

g. Generally, agencies retain records on former employees for no longer than 1 year after the employee leaves.

Note 5.—When an agency retains an automated or microform version of any of the above documents, retention of such records longer than shown is permitted (except for those records subject to 5 U.S.C. 4303(d)) for agency use or for historical or statistical analysis, but only so long as the record is not used in a determination directly affecting the individual about whom the record pertains (after the manual record has been or should have been destroyed).

SYSTEM MANAGER AND ADDRESS:

Assistant Director for Workforce Information, Personnel Systems and Oversight Group, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system contains information about them should contact their servicing personnel office, supervisor/manager, Performance Review Board office, or other agency designated office maintaining their performance-related records where they are or were employed. Individuals must furnish the following information for their records to be located and identified:

- Full name(s).
- Social Security number.
- Position occupied and unit where employed.

RECORDS ACCESS PROCEDURE:

Individuals wishing access to their records should contact the appropriate office indicated in the Notification Procedure section where they are or were employed. Individuals must furnish the following information for their records to be located and identified:

- Full name(s).
- Social security number.
- Position occupied and unit where employed.

Individuals requesting access to records must also comply with the Office's Privacy Act regulations on verification of identity and access to records (5 CFR part 297).

CONTESTING RECORD PROCEDURE:

Individuals wishing to request amendment to their records should contact the appropriate office indicated in the Notification Procedure section where they are or were employed. Individuals must furnish the following information for their records to be located and identified:

- Full name(s).
- Social security number.
- Position occupied and unit where employed.

Individuals requesting amendment must also comply with the Office's Privacy Act regulations on verification of identity and amendment of records (5 CFR part 297).

RECORDS SOURCE CATEGORIES:

- Records in this system are obtained from:
- Supervisors/managers.
 - Performance Review Boards.
 - Executive Resource Boards.
 - Other individuals or agency officials.
 - Other agency records.
 - The individual to whom the records pertain.

OPM/GOVT-3

SYSTEM NAME:

Records of Adverse Actions, Performance Based Reduction in Grade and Removal Actions, and Termination of Probationers.

SYSTEM LOCATION:

These records are located in personnel or designated offices in Federal agencies in which the actions were processed.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or former Federal employees (including Senior Executive Service (SES) employees) against whom such an action has been proposed or taken in accordance with 5 CFR parts 315 (subparts H and I), 432, 752, or 754 of the Office's regulations.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records and documents on: (1) The processing of adverse actions, performance based reduction in grade and removal actions, and (2) the termination of employees serving initial appointment probation and return to their former grade of employees serving supervisory or managerial probation. The records include, as appropriate, copies of the notice of proposed action, materials relied on by the agency to support the reasons in the notice, replies by the employee, statements of witness, hearing notices, reports, and agency decisions.

Note.—This system does not include records, including the action file itself, compiled when such actions are appealed to the Merit Systems Protection Board (MSPB) or become part of a discrimination complaint record at the Equal Employment Opportunity Commission (EEOC). Such appeal and discrimination complaint file records are covered by the appropriate MSPB or EEOC system of records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of the system includes the following with any revisions or amendments: 5 U.S.C. 3321, 4303, 7504, 7514, and 7543.

PURPOSE:

These records result from the proposal, processing, and documentation of these actions taken either by the Office or by agencies against employees in accordance with 5 CFR parts 315 (subparts H and I), 432, 752, or 754 of the Office's regulations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

a. To provide information to officials of labor organizations recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting work conditions.

b. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, when the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

c. To disclose information to any source from which additional information is requested for processing any of the covered actions or in regard to any appeal or administrative review procedure, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested.

d. To disclose information to a Federal agency, in response to its request, in connection with hiring or retaining an employee, issuing a security clearance, conducting a security or suitability investigation of an individual, or classifying jobs, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

e. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

f. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Government is a party to the judicial or administrative proceeding.

g. To disclose information to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the agency is authorized to appear, when:

1. The agency, or any component thereof; or
2. Any employee of the agency in his or her official capacity; or
3. Any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or
4. The United States, when the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the agency is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

h. By the National Archives and Records Administration in records management inspections and its role as Archivist.

i. By the agency maintaining the records or the Office to locate individuals for personnel research or survey response and in producing summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related workforce studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

j. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

k. To disclose information to the Merit Systems Protection Board or the Office of the Special Counsel in connection with appeals, special studies of the civil service and other merit systems, review of Office rules and regulations, investigations of alleged or possible prohibited personnel practices, and such other functions, as promulgated in 5 U.S.C. 1205 and 1206, and as specified in 5 U.S.C. 7503(c) and 5 U.S.C. 7513(e), or as may be authorized by law.

l. To disclose information to the EEOC when requested in connection with investigations into alleged or possible discrimination practices in the Federal

sector, examination of Federal affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures, or other functions vested in the Commission.

m. To disclose information to the Federal Labor Relations Authority or its General Counsel when requested in connection with investigations of allegations of unfair labor practices or matters before the Federal Service Impasses Panel.

n. To provide an official of another Federal agency information he or she needs to know in the performance of his or her official duties or reconciling or reconstructing data files, in support of the functions for which the records were collected and maintained.

o. To disclose information to private sector (i.e., non-Federal, State, or local governments) agencies, organizations, boards, bureaus, or commissions. Such disclosures may be made only when the disclosing agency determines that the records are properly constituted in accordance with Office or employing agency requirements; the records are accurate, relevant, timely, and complete; and the disclosure is in the best interests of the Government. When the agency's cooperation with the private sector entity, through the exchange of individual records, directly benefits the agency's completion of its mission, enhances the agency's personnel management functions, or increases the public confidence in the agency's or the Federal Government's role in the community, then the Government's best interests are served. Further, only such information that is clearly relevant and necessary for accomplishing the intended uses of the information as certified by the receiving private sector entity, are to be furnished.

p. To disclose to contractors, grantees, or volunteers performing or working on a contract, service, grant, cooperative agreement, or job for the Federal Government.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDING, AND RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders, in automated media, or on microfiche or microfilm.

RETRIEVABILITY:

These records are retrieved by the names and social security number of the individuals on whom they are maintained.

SAFEGUARDS:

These records are maintained in locked metal filing cabinets or in automated media to which only authorized personnel have access.

RETENTION AND DISPOSAL:

Records documenting an adverse action, performance-based removal or demotion action, or covered actions against probationers are disposed of not sooner than four years nor later than seven years after the closing of the case in accordance with each agency's records disposition manual. Disposal is by shredding, or erasure of tapes (disks).

SYSTEM MANAGER AND ADDRESS:

Assistant Director for Labor Relations and Workforce Performance, Personnel Systems and Oversight Group, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415 for actions taken under parts 432, 752 (subparts A through D only), and 754. Assistant Director for Executive and Management Policy, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415 for actions taken against SES appointees under subparts E and F, of part 752. Associate Director for Career Entry, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415 for actions taken under part 315.

NOTIFICATION PROCEDURE:

Individuals receiving notice of a proposed adverse, removal, or demotion action must be provided access to all documents supporting the notice. At any time thereafter, individuals subject to the action will be provided access to the complete record. Individuals should contact the agency personnel or designated office where the action was processed regarding the existence of such records on them. They must furnish the following information for their records to be located and identified:

- a. Name.
- b. Date of birth.
- c. Approximate date of closing of the case and kind of action taken.
- d. Organizational component involved.

RECORD ACCESS PROCEDURE:

Individuals against whom such actions are taken must be provided access to the record. However, after the action has been closed, an individual may request access to the official file by contacting the agency personnel or designated office where the action was processed. Individuals must furnish the following information for their records to be located and identified:

- a. Name.

- b. Date of birth.
- c. Approximate date of closing of the case and kind of action taken.
- d. Organizational component involved.

Individuals requesting access must also follow the Office's Privacy Act regulations on verification of identity and access to records (5 CFR part 297).

CONTESTING RECORD PROCEDURE:

Review of requests from individuals seeking amendment of their records that have or could have been the subject of a judicial, quasi-judicial, or administrative action will be limited in scope. Review of amendment requests of these records will be restricted to determining if the record accurately documents the action of the agency ruling on the case, and will not include a review of the merits of the action, determination, or finding.

Individuals wishing to request amendment of their records to correct factual errors should contact the agency personnel or designated office where the actions were processed. Individuals must furnish the following information for their records to be located and identified:

- a. Name.
- b. Date of birth.
- c. Approximate date of closing of the case and kind of action taken.
- d. Organizational component involved.

Individuals requesting amendment must also follow the Office's Privacy Act regulations on verification of identity and amendment of records (5 CFR part 297).

RECORD SOURCE CATEGORIES:

Information in this system of records is provided:

- a. By supervisors/managers.
- b. By the individual on whom the record is maintained.
- c. By testimony of witnesses.
- d. By other agency officials.
- e. By other agency records.
- f. From related correspondence from organizations or persons.

OPM/GOVT-4 [Reserved]

OPM/GOVT-5

SYSTEM NAME:

Recruiting, Examining, and Placement Records.

SYSTEM LOCATION:

Associate Director for Career Entry, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415, OPM regional and area offices; and personnel or other designated offices of Federal agencies that are authorized to make appointments and to act for the Office by delegated authority.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

a. Persons who have applied to the Office or agencies for Federal employment and current and former Federal employees submitting applications for other positions in the Federal service.

b. Applicants for Federal employment believed or found to be unsuitable for employment on medical grounds.

CATEGORIES OF RECORDS IN THE SYSTEM:

In general, all records in this system contain identifying information including name, date of birth, social security number, and home address. These records pertain to assembled and unassembled examining procedures and contain information on both competitive examinations and on certain noncompetitive actions, such as determinations of time-in-grade restriction waivers, waiver of qualification requirement determinations, and variations in regulatory requirements in individual cases.

This system includes such records as—

a. Applications for employment that contain information on work and education, military service, convictions for offenses against the law, military service, and indications of specialized training or receipt of awards or honors. These records may also include copies of correspondence between the applicant and the Office or agency.

b. Results of written exams and indications of how information in the application was rated. These records also contain information on the ranking of an applicant, his or her placement on a list of eligibles, what certificates applicant's names appeared on, an agency's request for Office approval of the agency's objection to an eligible's qualifications and the Office's decision in the matter, an agency's request for Office approval for the agency to pass over an eligible and the Office's decision in the matter, and an agency's decision to object/pass over an eligible when the agency has authority to make such decisions under agreement with the Office.

c. Records regarding the Office's final decision on an agency's decision to object/pass over an eligible for suitability or medical reasons or when the objection/pass over decision applies to a compensable preference eligible with 30 percent or more disability. (Does not include a rating of ineligibility for employment because of a confirmed positive test result under Executive Order 12564.)

d. Responses to and results of approved personality or similar tests administered by the Office or agency.

e. Records relating to rating appeals filed with the Office or agency.

f. Registration sheets, control cards, and related documents regarding Federal employees requesting placement assistance in view of pending or realized displacement because of reduction in force, transfer or discontinuance of function, or reorganization.

g. Records concerning non-competitive action cases referred to the Office for decision. These files include such records as waiver of time-in-grade requirements, decisions on superior qualification appointments, temporary appointments outside a register, and employee status determinations. Authority for making decisions on many of these actions has also been delegated to agencies. The records retained by the Office on such actions and copies of such files retained by the agency submitting the request to the Office, along with records that agencies maintain as a result of the Office's delegations of authorities, are considered part of this system of records.

h. Records retained to support Schedule A appointments of severely physically handicapped individuals, retained both by the Office and agencies acting under the Office delegated authorities, are part of this system.

i. Agency applicant supply file systems (when the agency retains applications, resumes, and other related records for hard-to-fill or unique positions, for future consideration), along with any pre-employment vouchers obtained in connection with an agency's processing of an application, are included in this system.

j. Records derived from the Office-developed or agency-developed assessment center exercises.

k. Case files related to medical suitability determinations and appeals.

l. Records related to an applicant's examination for use of illegal drugs under provisions of Executive Order 12564. Such records may be retained by the agency (e.g., evidence of confirmed positive test results) or by a contractor laboratory (e.g., the record of the testing of an applicant, whether negative, or confirmed or unconfirmed positive test result).

Note 1.—Only Routine Use "p" identified for this system of records is applicable to records relating to drug testing under Executive Order 12564. Further, such records shall be disclosed only to a very limited number of officials within the agency.

generally only to the agency Medical Review Officer (MRO), the administrator of the agency Employee Assistance Program, and any supervisory or management official within the employee's agency having authority to take the adverse personnel action against the employee.

Note 2.—The Office does not intend that records created by agencies in connection with the agency's Merit Promotion Plan program be included in the term "Applicant Supply File" as used within this notice. It is the Office's position that Merit Promotion Plan records are not a system of records within the meaning of the Privacy Act as such records are usually filed by a vacancy announcement number or some other key that is not a unique personnel identifier. Agencies may choose to consider such records as within the meaning of a system of records as used in the Privacy Act, but if they do so, they are solely responsible for implementing Privacy Act requirements, including establishment and notice of a system of records pertaining to such records.

Note 3.—To the extent that an agency utilizes an automated medium in connection with maintenance of records in this system, the automated versions of these records are considered covered by this system of records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of the system includes the following with any revisions or amendments: 5 U.S.C. 1302, 3109, 3301, 3302, 3304, 3305, 3306, 3307, 3309, 3313, 3317, 3318, 3319, 3326, 4103, 4723, 5532, and 5533, and Executive Order 9397.

PURPOSE:

The records are used in considering individuals who have applied for positions in the Federal service by making determinations of qualifications including medical qualifications, for positions applied for, and to rate and rank applicants applying for the same or similar positions. They are also used to refer candidates to Federal agencies for employment consideration, including appointment, transfer, reinstatement, reassignment, or promotion. Records derived from the Office-developed or agency-developed assessment center exercises may be used to determine training needs of participants. These records may also be used to locate individuals for personnel research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Note 4.—With the exception of Routine Use "p," none of the Other Routine Uses identified for this system of records are applicable to records relating to drug testing under Executive Order 12564. Further, such records shall be disclosed only to a very limited number of officials within that agency, generally only to the agency Medical Review Officer (MRO), the administrator of

the agency's Employee Assistance Program, and the management official empowered to recommend or take adverse action affecting the individual.

a. To refer applicants, including current and former Federal employees to Federal agencies for consideration for employment, transfer, reassignment, reinstatement, or promotion.

b. With the permission of the applicant, to refer applicants to State and local governments, congressional offices, international organizations, and other public offices for employment consideration.

c. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, when the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

d. To disclose information to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purposes of the request, and to identify the type of information requested), when necessary to obtain information relevant to an agency decision concerning hiring or retaining an employee, issuing a security clearance, conducting a security or suitability investigation of an individual, classifying positions, letting a contract, or issuing a license, grant, or other benefit.

e. To disclose information to a Federal agency, in response to its request, in connection with hiring or retaining an employee, issuing a security clearance, conducting a security or suitability investigation of an individual, classifying positions, letting a contract, or issuing a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision in the matter.

f. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A-19.

g. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

h. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Government is a party to a judicial or administrative proceeding.

i. To disclose information to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the agency is authorized to appear, when:

1. The agency, or any component thereof; or

2. Any employee of the agency in his or her official capacity; or

3. Any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or

4. The United States, when the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the agency is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

j. By the National Archives and Records Administration in records management inspections and its role as Archivist.

k. By the agency maintaining the records or by the Office to locate individuals for personnel research or survey response or in producing summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related workforce studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

l. To disclose information to the Merit Systems Protection Board or the Office of the Special Counsel in connection with appeals, special studies of the civil service and other merit systems, review of Office rules and rules and regulations, investigations of alleged or possible prohibited personnel practices, and such other functions; e.g., as prescribed in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

m. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations into alleged or possible discrimination practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines or Employee Selection

Procedures, or other functions vested in the Commission.

n. To disclose information to the Federal Labor Relations Authority or its General Counsel when requested in connection with investigations of allegations of unfair labor practices or matters before the Federal Service Impasses Panel.

o. To disclose, in response to a request for discovery or for an appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

p. To disclose the results of a drug test of a Federal employee pursuant to an order of a court of competent jurisdiction where required by the United States Government to defend against any challenge against any adverse personnel action.

q. To disclose information to Federal, State, local, and professional licensing boards, Boards of Medical Examiners, or to the Federation of State Medical Boards or a similar non-government entity which maintains records concerning the issuance, retention, or revocation of licenses, certifications, or registration necessary to practice an occupation, profession, or specialty, in order to obtain information relevant to an agency decision concerning the hiring, retention, or termination of an employee or to inform a Federal agency or licensing board or the appropriate non-government entity about the health care practice of a terminated, resigned, or retired health care employee whose professional health care activity so significantly failed to conform to generally accepted standards of professional medical practice as to raise reasonable concern for the health and safety of patients in the private sector or from another Federal agency.

r. To disclose information to contractors, grantees, or volunteers performing or working on a contract, service, grant, cooperative agreement, or job for the Federal Government.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDING, AND RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on magnetic tapes, disk, punched cards, microfiche, cards, lists, and forms.

RETRIEVABILITY:

Records are retrieved by the name, date of birth, social security number, and/or identification number assigned to the individual on whom they are maintained.

SAFEGUARDS:

Records are maintained in a secured area or automated media with access limited to authorized personnel whose duties require access.

RETENTION AND DISPOSAL:

Records in this system are retained for varying lengths of time, ranging from a few months to 5 years, e.g., applicant records that are part of medical determination case files or medical suitability appeal files are retained for 3 years from completion of action on the case. Most records are retained for a period of 1 to 2 years. Some records, such as individual applications, become part of the person's permanent official records when hired, while some records (e.g., non-competitive action case files), are retained for 5 years. Some records are destroyed by shredding or burning while magnetic tapes or disks are erased.

SYSTEM MANAGER AND ADDRESS:

Associate Director for Career Entry, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the agency or the Office where application was made or examination was taken. Individuals must provide the following information for their records to be located and identified:

- a. Name.
- b. Date of birth.
- c. Social security number.
- d. Identification number (if known).
- e. Approximate date of record.
- f. Title of examination or announcement with which concerned.
- g. Geographic area in which consideration was requested.

RECORD ACCESS PROCEDURE:

Specific materials in this system have been exempted from Privacy Act provisions at 5 U.S.C.(c)(3) and (d), regarding access to records.

The section of this notice titled "Systems Exempted from Certain Provisions of the Act" indicates the kind of material exempted and the reasons for exempting them from access. Individuals wishing to request access to their non-exempt records should contact the agency or the Office where application was made or examination was taken. Individuals must provide the following information for their records to be located and identified:

- a. Name.
- b. Date of birth.
- c. Social security number.

- d. Identification number (if known).
- e. Approximate date of record.
- f. Title of examination or announcement with which concerned.
- g. Geographic area in which consideration was requested.

Individuals requesting access must also comply with the Office's Privacy Act regulations on verification of identity and access to records (5 CFR 297).

CONTESTING RECORD PROCEDURE:

Specific materials in this system have been exempted from Privacy Act provisions at 5 U.S.C. 552a(d), regarding amendment of records. The section of this notice titled "Systems Exempted from Certain Provisions of the Act" indicates the kinds of material exempted and the reasons for exempting them from amendment. An individual may contact the agency or the Office where the application is filed at any time to update qualifications, education, experience, or other data maintained in the system.

Such regular administrative updating of records should not be requested under the provisions of the Privacy Act. However, individuals wishing to request amendment of other records under the provisions of the Privacy Act should contact the agency or the Office where the application was made or the examination was taken. Individuals must provide the following information for their records to be located and identified:

- a. Name.
- b. Date of birth.
- c. Social security number.
- d. Identification number (if known).
- e. Approximate date of record.
- f. Title of examination or announcement with which concerned.
- g. Geographic area in which consideration was requested.

Individuals requesting amendment must also comply with the Office's Privacy Act regulations on verification of identity and amendment of records (5 CFR part 297).

Note 5.—In responding to an inquiry or a request for access or amendment, resource specialists may contact the Office's area office that provides examining and rating assistance for help in processing the request.

RECORD SOURCE CATEGORIES:

Information in this system of records comes from the individual to whom it applies or is derived from information the individual supplied, reports from medical personnel on physical qualifications, results of examinations that are made known to applicants, agencies, and Office records, and

vouchers supplied by references or other sources that the applicant lists or that are developed.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system contains investigative materials that are used solely to determine the appropriateness of a request for approval of an objection to an eligible's qualifications for Federal civilian employment or vouchers received during the processing of an application. The Privacy Act, at 5 U.S.C. 552a(k)(5), permits an agency to exempt such investigative material from certain provisions of the Act, to the extent that release of the material to the individual whom the information is about would—

a. Reveal the identity of a source who furnished information to the Government under an express promise (granted on or after September 27, 1975) that the identity of the source would be held in confidence; or

b. Reveal the identity of a source who, prior to September 27, 1975, furnished information to the Government under an implied promise that the identity of the source would be held in confidence.

This system contains testing and examination materials used solely to determine individual qualifications for appointment or promotion in the Federal service. The Privacy Act, at 5 U.S.C. 552a(k)(6), permits an agency to exempt all such testing or examination material and information from certain provisions of the Act, when disclosure of the material would compromise the objectivity or fairness of the testing or examination process. The Office has claimed exemptions from the requirements of 5 U.S.C. 552a(d), which relate to access to and amendment of records.

The specific material exempted include, but are not limited to, the following:

- a. Answer keys.
- b. Assessment center exercises.
- c. Assessment center exercise reports.
- d. Assessor guidance material.
- e. Assessment center observation reports.
- f. Assessment center summary reports.
- g. Other applicant appraisal methods, such as performance tests, work samples and simulations, miniature training and evaluation exercises, structured interviews, and their associated evaluation guides and reports.
- h. Item analyses and similar data that contain test keys.
- i. Ratings given for validating examinations.

j. Rating schedules, including crediting plans and scoring formulas for other selection procedures.

k. Rating sheets.

l. Test booklets, including the written instructions for their preparation.

m. Test item files.

n. Test answer sheets.

OPM/GOVT-6

SYSTEM NAME:

Personnel Research and Test Validation Records.

SYSTEM LOCATION:

Assistant Director, Office of Personnel Research and Development, Career Entry, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415; the Office's regional offices and agency personnel offices (or other designated offices) conducting personnel research.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Federal employees, applicants for Federal employment, current and former State and local government employees, and applicants for State and local government employment, selected private sector employees, and applicants for sample comparison groups.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records include information on education and employment history, test scores, responses to test items and questionnaires, interview data, and ratings of supervisors regarding the individuals to whom the records pertain. Additional information (race, national origin, disability status, and background) is collected from applicants for certain examinations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of the system includes the following with any revisions or amendments: 5 U.S.C. 1303, 3301, and 4702.

PURPOSES:

These records are collected, maintained, and used by the Office or other Federal agencies for the construction, analysis, and validation of written tests, and for research on and evaluation of personnel/organizational management and staffing methods, including workforce effectiveness studies. Agencies and the Office may provide each other with data collected in support of these functions. Such research includes studies extending over a period of time (longitudinal studies).

Private sector data are used in research only, to evaluate Federal study results against non-Federal comparison groups. Race and national origin data are used by the Office or other agencies to evaluate the role and effects of selection procedures in the total employee staffing process. Use of these race and national origin data is limited to such evaluation, oversight and research projects conducted by the employing agencies or the Office. The records may also be used by the Office or other Federal agencies to locate individuals for personnel research. Data are collected on a project-by-project basis under conditions assuring the confidentiality of the information. No personnel action or selection is made using these research records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Under normal circumstances, no individually identifiable records will be provided. However, under those unusual circumstances when an individually identifiable record is required, proper safeguards will be maintained to protect the information collected from unwarranted invasion of personal privacy. Such protection must be specified in writing by the requester and, to the satisfaction of the agency official responsible for maintaining the data, indicate that the proposed use of the data is in compliance with the letter and spirit of the Privacy Act. Under these circumstances, the routine uses are as follows:

a. By the OPM or employing agency maintaining the records to locate individuals for personnel research or survey responses and in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related workforce studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

b. To furnish personnel records and information to the Equal Employment Opportunity Commission for use in determining the existence of adverse impact in the total selection program, reviewing allegations of discrimination, or assessing the status of compliance with Federal law.

c. To furnish information to the Merit Systems Protection Board or the Office of the Special Counsel in connection with actions by offices relating to

allegations of discriminatory practices on the part of an agency or one of its employees.

d. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

e. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Government is a party to the judicial or administrative proceeding.

f. To disclose information to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the agency is authorized to appear, when:

1. The agency, or any component thereof; or
2. Any employee of the agency in his or her official capacity; or
3. Any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or
4. The United States, where the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the agency is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

g. To provide information to a congressional office from the record of an individual in response to a request from that congressional office made at the request of that individual.

h. To provide aggregate data to non-Federal organizations participating in workforce studies. These data will be limited to individuals associated with the organization requesting the data or to data aggregated for all organizations in a study.

i. To disclose information to contractors, grantees, or volunteers performing or working on a contract, service, grant, cooperative agreement, or job for the Federal Government.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDING, AND RETENTION AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and on punched cards disks, and magnetic tape.

RETRIEVABILITY:

Records are generally maintained by project. Personal information can be retrieved by name or personal identifier only for certain research projects such as those involving longitudinal studies.

SAFEGUARDS:

Records are kept in locked files in a locked room with access limited to authorized staff. Access to tape, disk, and other files used in data processing will be only by authorized staff.

RETENTION AND DISPOSAL:

Records are retained for 2 years after completion of the project unless needed in the course of litigation or other administrative actions involving a research or test validation survey. Records collected for longitudinal studies will be maintained indefinitely. Manual records are destroyed by shredding or burning and magnetic tapes and disks are erased.

SYSTEM MANAGER AND ADDRESS:

Assistant Director, Office of Personnel Research and Development, Career Entry, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the system manager, the OPM regional office servicing the State where they employed, or their employing agency's personnel office. Individuals must furnish the following information for their records to be located and identified:

- a. Full name.
- b. Date of birth.
- c. If known, the title, time, and/or place of the research study in which the individual participated.
- d. Social security number.
- e. Signature.

RECORD ACCESS PROCEDURE:

Specific materials in this system have been exempted from Privacy Act provisions at 5 U.S.C. 552a(d), regarding access to records. The section of this notice titled "Systems Exempted from Certain Provisions of the Act" indicates the kinds of material exempted and the reasons for exempting them from access. Individuals wishing to request access to non-exempt records should contact the appropriate office listed in the Notification Procedure section. Individuals must furnish the following information for their records to be located and identified:

- a. Full name.
- b. Date of birth.

c. If known, the title, time, and/or place of the research study in which the individual participated.

d. Social security number.

e. Signature.

Individuals requesting access must also comply with the Office's Privacy Act regulations on verification of identity and access to records [5 CFR part 297].

CONTESTING RECORD PROCEDURE:

Specific materials in this system have been exempted from Privacy Act provisions at 5 U.S.C. 552a(d) regarding amendment of records. The section of this notice titled "Systems Exempted from Certain Provisions of the Act" indicates the kinds of materials exempted and the reasons for exempting them from amendment. Individuals wishing to request amendment of any non-exempt records should contact the appropriate office listed in the Notification Procedure section. Individuals must furnish the following information for their records to be located and identified:

- a. Full name.
- b. Date of birth.
- c. If known, the title, time, and/or place of the research study in which the individual participated.
- d. Social security number.
- e. Signature.

Individuals requesting amendment must also comply with the Office's Privacy Act regulations on verification of identity and amendment of records [5 CFR part 297].

RECORD SOURCE CATEGORIES:

Individual applicants and employees; supervisors; assessment center assessors; and agency or Office personnel files and records (e.g., race, sex, national origin, and disability status data from OPM/GOVT-1 and OPM/GOVT-7 systems of records).

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system contains testing and examination materials that are used solely to determine individual qualifications for appointment or promotion in the Federal service. The Privacy Act, at 5 U.S.C. 552a(k)(6), permits an agency to exempt all such testing and examination material and information from certain provisions of the Act, when the disclosure of the material would compromise the objectivity or fairness of the testing or examination process. The Office has claimed exemptions from the requirements of 5 U.S.C. 552a(d), which

relates to access to and amendment of records.

This system contains records required to be maintained and used solely for statistical purposes. The Privacy Act, at 5 U.S.C. 552a(k)(4), permits an agency to exempt all such statistical records from certain provisions of the Act, when the disclosure of the material would compromise the objectivity and fairness of these records. The Office has claimed exemptions from the requirements of 5 U.S.C. 552a(d), which relates to access to and amendment of records.

The specific materials exempted include, but are not limited to, the following:

- a. Answer keys.
- b. Assessment center and interview exercises.
- c. Assessment center and interview exercise reports.
- d. Assessor guidance material.
- e. Assessment center observation reports.
- f. Assessment center and interview summary reports.
- g. Other applicant appraisal methods, such as performance tests, work samples and simulations, miniature training and evaluation exercises, interviews, and reports.
- h. Item analyses and similar data that contain test keys.
- i. Ratings given for validating examinations.
- j. Rating schedules, including crediting plans and scoring formulas for other selection procedures.
- k. Ratings sheets.
- l. Test booklets, including the written instructions for their preparation.
- m. Test item files.
- n. Test answer sheets.
- o. Those portions of research and development files that could specifically reveal the contents of the above exempt documents.

OPM/GOVT-7

SYSTEM NAME:

Applicant Race, Sex, National Origin, and Disability Status Records.

SYSTEM LOCATION:

Records in this system may be located in the following offices:

- a. Office of Personnel Research and Development, Career Entry Group, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.
- b. Office of Affirmative Recruiting and Employment, Career Entry Group, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415.
- c. The Office's regional offices and any register-holding area offices under the jurisdiction of a regional office.

d. Agency Personnel, Equal Employment Opportunity, or Federal Equal Opportunity Recruitment Program offices or other designated offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Federal employees and individuals who have applied for Federal employment, including—

- a. Applicants for examinations administered either by the Office or by employing agencies.
- b. Applicants on registers or in inventories by the Office and subject to its regulations.
- c. Applicants for positions in agencies having direct hiring authority and using their own examining procedures in compliance with the Office regulations.
- d. Applicants whose records are retained in an agency's Equal Opportunity Recruitment file (including any file an agency maintains on current employees from under-represented groups).
- e. Applicants (including current and former Federal employees) who apply for vacancies announced under an agency's merit promotion plan.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records include the individual's name; social security number; date of birth; statement of major field of study; type of current or former Federal employment status (e.g., career or temporary); applications showing work and education experience; and race, sex, national origin, and disability status data.

Note.—The race and national origin information in this system is obtained by three alternative methods: (1) Use of the Office's form on which individuals identify themselves as to race and national origin; or (2) by visual observation (race) or knowledge of an individual's background (national origin); or (3) at the agency's option, from the OPM/GOVT-1 system in the case of applicants who are current Federal employees. Disability status is obtained by use of Standard Form 258, "Self Identification of Medical Disability," which allows for a description by self-identification of the handicap.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of the system includes the following with any revisions or amendments: 5 U.S.C. 7201, Sections 4A, 4B, 15A(1) and (2), 15B(11), and 15D(11); Uniform Guidelines on Employee Selection Procedures (1978); 43 FR 38297 *et seq.* (August 25, 1978); 29 CFR 720.301; and 29 CFR 1613.301.

PURPOSES:

These records are used by OPM and agencies to—

- a. Evaluate personnel/organizational measurement and selection methods.
- b. Implement and evaluate agency affirmative employment programs.
- c. Implement and evaluate agency Federal Equal Opportunity Recruitment Programs (including establishment of minority recruitment files).
- d. Enable the Office to meet its responsibility to assess an agency's implementation of the Federal Equal Opportunity Recruitment Program.
- e. Determine adverse impact in the selection process as required by the Uniform Guidelines cited in the Authority section above. (See also "Questions and Answers," on those Guidelines published at 44 FR 11996, March 2, 1979.)
- f. Enable reports to be prepared regarding breakdowns by race, sex, and national origin of applicants (by exams taken, and on the selection of such applicants for employment).
- g. To locate individuals for personnel research.

Note 1.—These data are maintained under conditions that ensure that the individual's identification as to race, sex, national origin, or disability status does not accompany that individual's application nor is otherwise made known when the individual is under consideration by a selecting official.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

- a. To disclose information to the Equal Employment Opportunity Commission (EEOC), in response to its request for use in the conduct of an examination of an agency's compliance with affirmative action plan instructions and the Uniform Guidelines on Employee Selection Procedures (1978), or other requirements imposed on agencies under EEOC authorities in connection with agency Equal Employment Opportunity programs.
- b. To disclose information to the Merit Systems Protection Board or the Office of the Special Counsel in connection with the processing of appeals, special studies relating to the civil service and other merit systems in the executive branch, investigations into allegations of prohibited personnel practices, and such other functions; e.g., as prescribed in 5 U.S.C. 1205 and 1206, or as may be authorized by law.
- c. By the Office or employing agency maintaining the records to locate individuals for personnel research or survey response and in the production of summary descriptive statistics and

analytical studies in support of the function for which the records are collected and maintained, or for related workforce studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

d. To disclose information to a Federal agency in response to its request for use in its Federal Equal Opportunity Recruitment Program to the extent that the information is relevant and necessary to the agency's efforts in identifying possible sources for minority recruitment.

e. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

f. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Government is party to a judicial or administrative proceeding.

g. To disclose information to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the agency is authorized to appear, when

1. The agency, or any component thereof; or

2. Any employee of the agency in his or her official capacity; or

3. Any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or

4. The United States, where the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the agency is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

h. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

i. To disclose information to contractors, grantees, or volunteers performing or working on a contract, service, grant cooperative agreement, or job for the Federal Government.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDING, AND RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and on magnetic tape and disks.

RETRIEVABILITY:

Records are retrieved by the name and social security number of the individuals on whom they are maintained.

SAFEGUARDS:

Records are retained in locked metal filing cabinets in a secured room or in a computerized system accessible by confidential passwords issued only to specific personnel.

RETENTION AND DISPOSAL:

Records are generally retained for 2 years, except when needed to process applications or to prepare adverse impact and related reports, or for as long as an application is still under consideration for selection purposes. When records are needed in the course of an administrative procedure or litigation, they may be maintained until the administrative procedure or litigation is completed. Manual records are shredded or burned and magnetic tapes and disks are erased.

Note 2.—When an agency retains an automated version of any of the records in this system, maintenance of that record beyond the above retention schedules is permitted for historical or statistical analysis, but only so long as the record is not used in a determination directly affecting the individual about whom the record pertains after the prescribed destruction date.

SYSTEM MANAGER AND ADDRESS:

Assistant Director, Office of Personnel Research and Development, Career Entry Group, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

NOTIFICATION PROCEDURE:

Those individuals wishing to inquire if this system contains information about them should contact the system manager; the Office's regional offices covering the State where the application for Federal employment was filed; or the personnel, Equal Employment Opportunity, or Equal Employment Opportunity Recruitment office or other designated office where they took an exam, filed an application, or where they are employed. Individuals must furnish the following information for their records to be located and identified:

- Name.
- Social security number.

c. Title of examination, position, or vacancy announcement for which they filed.

d. The OPM or employing agency office where they are employed or submitted the information.

e. Signature.

RECORD ACCESS PROCEDURE:

Individuals wishing to request access to records about themselves should contact the appropriate office shown in the Notification Procedure section. Individuals must furnish the following information for their records to be located and identified:

- Name.
- Social security number.

c. Title of examination, position, or vacancy announcement for which they filed.

d. The OPM or employing agency office where they are employed or submitted the information.

e. Signature.

An individual requesting access must also follow OPM's Privacy Act regulations on verification of identity and access to records (5 CFR 297).

CONTESTING RECORD PROCEDURE:

Individuals wishing to request amendment of their records should contact the appropriate office shown in the Notification Procedure section. Individuals must furnish the following information for their records to be located and identified:

- Name.
- Social security number.

c. Title of examination, position, or vacancy announcement for which they filed.

d. The OPM or employing agency office where they are employed or submitted the information.

e. Signature.

An individual requesting amendment must also follow OPM's Privacy Act regulations on verification of identity and amendment of records (5 CFR part 297).

RECORD SOURCE CATEGORIES:

Information is provided by the individual to whom the record pertains, on such forms as Personnel Research Questionnaire 79-1 (OPM Form 1377), Background Survey Questionnaire 79-2 (OPM Form 1386), or equivalent forms, or is obtained directly from other agency or OPM records (e.g., race, sex, national origin, and disability status data may be obtained from the OPM/GOVT-1, General Personnel Records system).

OPM/GOVT-8 [Reserved]**OPM/GOVT-9****SYSTEM NAME:**

File on Position Classification Appeals, Job Grading Appeals, and Retained Grade or Pay Appeals.

SYSTEM LOCATION:

These records are located at the Office of Personnel Management, 1900 E Street NW., Washington, DC 20415, OPM regional offices, agency personnel offices (or other designated offices), and Federal records centers.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

a. Current and former Federal employees who have filed a position classification appeal or a job grading appeal with Agency Compliance and Evaluation, Office of Personnel Management; an OPM regional office; or with their agency.

b. Current and former Federal employees who have filed a retained grade or pay appeal with OPM's Agency Compliance and Evaluation; or an OPM regional office.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains information or documents relating to the processing and adjudication of a position classification appeal, job grading appeal, or retained grade or pay appeal. The records may include information and documents regarding a personnel action of the agency involved and the decision or determination rendered by an agency regarding the classifying or grading of a position or whether an employee is to remain in a retained grade or pay category. This system may also include transcripts of agency hearings and statements from agency employees.

Note 1.—This system notice also covers agency files created when: (a) An employee appeals a position classification or job grading decision to OPM or within the agency regardless of whether that agency appeal decision is further appealed to OPM; and (b) an employee files a retained grade or pay appeal with OPM.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of the system includes the following with any revisions or amendments: 5 U.S.C. 5112, 5115, 5346, and 5366.

PURPOSE:

These records are primarily used to document the processing and adjudication of a position classification appeal, job grading appeal, or retained grade or pay appeal. Internally, OPM

may use these records to locate individuals for personnel research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

These records and information in these records may be used:

a. To disclose pertinent information to the appropriate Federal, State, or local government agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, when the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A-19.

c. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

d. To disclose information to any source from which additional information is requested in the course of adjudicating a position classification appeal, job grading appeal, or retained grade or pay appeal to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested.

e. To disclose information to a Federal agency, in response to its request, in connection with the hiring, retaining or assigning of an employee, issuing a security clearance, conducting a security or suitability investigation of an individual, and classifying positions, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

f. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Government is a party to the judicial or administrative proceeding.

g. To disclose information to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the agency is authorized to appear, when:

1. The agency, or any component thereof; or

2. Any employee of the agency in his or her official capacity; or

3. Any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or

4. The United States, where the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the agency is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

h. By the Office or an agency in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related workforce studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

i. By the National Archives and Records Administration in records management inspections and its role as Archivist.

j. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

k. To disclose information to the Merit Systems Protection Board or the Office of the Special Counsel in connection with appeals, special studies of the civil service and other merit systems, review of Office rules and regulations, investigations of alleged or possible prohibited personnel practices, and such other functions; e.g., as promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

l. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations into alleged or possible discrimination practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures, or other functions vested in the Commission, and to otherwise ensure compliance with the provisions of 5 U.S.C. 7201.

m. To disclose information to the Federal Labor Relations Authority or its General Counsel when requested in connection with investigations of allegations of unfair labor practices or matters before the Federal Service Impasses Panel.

n. To disclose information to contractors, grantees, or volunteers performing or working on a contract, service, grant, cooperative agreement, or job for the Federal Government.

POLICIES AND PRACTICES FOR STORAGE, RETRIEVAL, SAFEGUARDS, AND RETENTION AND DISPOSAL OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and binders and on index cards, magnetic tape, disks, and microfiche.

RETRIEVAL:

These records are retrieved by the subject's name, and the name of the employing agency of the individual on whom the record is maintained.

SAFEGUARDS:

These records are located in lockable metal filing cabinets or automated media in a secured room, with access limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Records related to position classification appeal, job grading appeal, and retained grade or pay appeal files are maintained for 7 years after closing action on the case. Records are destroyed by shredding, burning, or erasing as appropriate.

SYSTEM MANAGER AND ADDRESS:

Assistant Director for Agency Compliance and Evaluation, Personnel Systems and Oversight Group, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should—

a. For records pertaining to retained grade or pay appeals, contact the system manager or the appropriate OPM regional office.

b. For records pertaining to a position classification appeal or job grading appeal, where the appeal was made only to OPM, contact the system manager or the OPM regional office, as appropriate.

c. For records pertaining to a position classification appeal or a job grading appeal filed with both the agency and OPM, contact the agency personnel officer, other designated officer, or the system manager, or the OPM regional office, as appropriate.

Individuals must furnish the following information for their records to be located and identified:

- a. Full name.
- b. Date of birth.

c. Agency in which employed when the appeal was filed and the approximate date of the closing of the case.

d. Kind of action (e.g., position classification appeal, job grading appeal, or retained grade or pay appeal).

RECORD ACCESS PROCEDURE:

Individuals who have filed a position classification appeal, job grading appeal, or a retained grade or pay appeal, must be provided access to the record. However, after the appeal has been closed, an individual may request access to the official copy of the records by writing the official indicated in the Notification Procedure section. Individuals must furnish the following information for their records to be located and identified:

- a. Full name.
- b. Date of birth.
- c. Agency in which employed when appeal was filed and the approximate date of the closing of the case.
- d. Kind of action (e.g., position classification appeal, job grading appeal, or retained grade or pay appeal).

Individuals requesting access must also follow OPM's Privacy Act regulations on verification of identity and access to records (5 CFR part 297).

CONTESTING RECORD PROCEDURE:

Review of requests from individuals seeking amendment of their records that have previously been or could have been the subject of a judicial or quasi-judicial action will be limited in scope. Review of amendment requests of these records will be restricted to determining if the record accurately documents the action of the agency or administrative body ruling on the case, and will not include a review of the merits of the action, determination, or finding.

Individuals wishing to request an amendment to their records to correct factual errors should contact the appropriate official indicated in the Notification Procedure section. Individuals must furnish the following information for their records to be located and identified:

- a. Full name.
- b. Date of birth.
- c. Agency in which employed when the appeal was filed and the approximate date of the closing of the case.
- d. Kind of action (e.g., position classification appeal, job grading appeal, or retained grade or pay appeal).

Individuals requesting amendment of their records must also follow OPM's Privacy Act regulations on verification of identity and amendment of records (5 CFR part 297).

RECORD SOURCE CATEGORIES:

- a. Individual to whom the record pertains.
- b. Agency and/or OPM records relating to the action.
- c. Statements from employees or testimony of witnesses.
- d. Transcript of hearings.

OPM/GOVT-10

SYSTEM NAME:

Employee Medical File System Records.

SYSTEM LOCATION:

- a. For current employees, records are located in agency medical, personnel, dispensary, health, safety, or other designated offices within the agency, or contractors performing a medical function for the agency.
- b. For former employees, most records will be located in an Employee Medical Folder (EMF) stored in Federal Records Storage Centers operated by the National Archives and Records Administration (NARA). In some cases, agencies may retain for a limited time (e.g., up to 3 years) some records on former employees.

Note 1.—The records in this system of records are "owned" by the Office of Personnel Management (Office) and should be provided to those Office employees who have an official need or use for those records. Therefore, if an employing agency is asked by an Office employee to access the records within this system, such a request should be honored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Federal civilian employees as defined in 5 U.S.C. 2105.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in this system include—

- a. Medical records, forms, and reports completed or obtained when an individual applies for a Federal job and is subsequently employee;
- b. Medical records, forms, and reports completed during employment as a condition of employment, either by the employing agency or by another agency, State or local government entity, or a private sector entity under contract to the employing agency;
- c. Records resulting from the testing of the employee for use of illegal drugs under Executive Order 12564. Such records may be retained by the agency (e.g., by the agency Medical Review Official) or by a contractor laboratory. This includes records of negative results, confirmed or unconfirmed positive test results, and documents

related to the reasons for testing or other aspects of test results.

d. Reports of on-the-job injuries and medical records, forms, and reports generated as a result of the filing of a claim for Workers' Compensation, whether the claim is accepted or not. (The official compensation claim file is not covered by this system; rather, it is part of the Department of Labor's Office of Workers' Compensation Program (OWCP) system of records.)

e. All other medical records, forms, and reports created on an employee during his/her period of employment, including any retained on a temporary basis (e.g., those designated to be retained only during the period of service with a given agency) and those designated for long-term retention (i.e., those retained for the entire duration of Federal service and for some period of time after).

Note 2.—Records maintained by an agency dispensary are included in this system only when they are the result of a condition of employment or related to an on-the-job occurrence.

Note 3.—Records pertaining to employee drug or alcohol abuse counseling or treatment, and those pertaining to other employee counseling programs conducted under Health Service Program established pursuant to 5 U.S.C. chapter 79, are not part of this system of records.

Note 4.—Only Routine Use "u" identified for this system of records is applicable to records relating to drug testing under Executive Order 12564. Further, such records shall be disclosed only to a very limited number of officials within the agency, generally only to the agency Medical Review Official (MRO), the administrator of the agency Employee Assistance Program, and any supervisory or management official within the employee's agency having authority to take the adverse personnel action against the employee.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of the system includes the following with any revisions or amendments:

Executive Orders 12107, 12196, and 12564 and 5 U.S.C. chapters 11, 31, 33, 43, 61, 63, and 83.

PURPOSE:

Records in this system of records are maintained for a variety of purposes, which include the following:

a. To ensure that records required to be retained on a long-term basis to meet the mandates of law, Executive order, or regulations (e.g., the Department of Labor's Occupational Safety and Health Administration (OSHA) and OWCP regulations), are so maintained.

b. To provide data necessary for proper medical evaluations and

diagnoses, to ensure that proper treatment is administered, and to maintain continuity of medical care.

c. To provide an accurate medical history of the total health care and medical treatment received by the individual as well as job and/or hazard exposure documentation and health monitoring in relation to health status and claims of the individual.

d. To enable the planning for further care of the patient.

e. To provide a record of communications among members of the health care team who contribute to the patient's care.

f. To provide a legal document describing the health care administered and any exposure incident.

g. To provide a method for evaluating quality of health care rendered and job-health-protection including engineering protection provided, protective equipment worn, workplace monitoring, and medical exam monitoring required by OSHA or by good practice.

h. To ensure that all relevant, necessary, accurate, and timely data are available to support any medically-related employment decisions affecting the subject of the records (e.g., in connection with fitness-for-duty and disability retirement decisions).

i. To document claims filed with and the decisions reached by the OWCP and the individual's possible reemployment rights under statutes governing that program.

j. To document employee's reporting of on-the-job injuries or unhealthy or unsafe working conditions, including the reporting of such conditions to the OSHA and actions taken by that agency or by the employing agency.

k. To ensure proper and accurate operation of the agency's employee drug testing program under Executive Order 12564.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Note 5.—With the exception of Routine Use "u," none of the other Routine Uses identified for this system of records are applicable to records relating to drug testing under Executive Order 12564. Further, such records shall be disclosed only to a very limited number of officials within the agency, generally only to the agency Medical Review Official (MRO), the administrator of the agency Employee Assistance Program, and the management official empowered to recommend or take adverse action affecting the individual.

These records and information in these records may be used—

a. To disclose information to the Department of Labor, Department of Veterans Affairs, Social Security

Administration, or a national, State, or local social security type agency, when necessary to adjudicate a claim (filed by or on behalf of the individual) under a retirement, insurance, or health benefit program.

b. To disclose information to a Federal, State, or local agency to the extent necessary to comply with laws governing reporting of communicable disease.

c. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency when the Government is a party to the judicial or administrative proceeding.

d. To disclose information to the Department of Justice, or in a proceeding before a court, adjudicative body, other administrative body before which the agency is authorized to appear, when:

1. The agency, or any component thereof; or
2. Any employee of the agency in his or her official capacity; or
3. Any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or
4. The United States, where the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the agency is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

e. To disclose in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

f. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order when the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

g. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A-19.

h. To disclose information to a congressional office from the record of an individual in response to an inquiry

from the congressional office made at the request of that individual.

i. To disclose information to the Merit System Protection Board or the Office of the Special Counsel, the Federal Labor Relations Authority and its General Counsel, the Equal Employment Opportunity Commission, arbitrators, and hearing examiners to the extent necessary to carry out their authorized duties.

j. To disclose information to survey team members from the Joint Commission on Accreditation of Hospitals (JCAH) when requested in connection with an accreditation review, but only to the extent that the information is relevant and necessary to meet the JCAH standards.

k. To disclose information to the National Archives and Records Administration in records management inspections and its role as Archivist.

l. To disclose information to health insurance carriers contracting with the Office to provide a health benefits plan under the Federal Employees Health Benefits Program information necessary to verify eligibility for payment of a claim for health benefits.

m. By the agency maintaining or responsible for generating the records to locate individuals for health research or survey response and in the production of summary descriptive statistics and analytical studies (e.g., epidemiological studies) in support of the function for which the records are collected and maintained. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study might be structured in such a way as to make the data individually identifiable by inference.

n. To disclose information to the Office of Federal Employees Group Life Insurance that is relevant and necessary to adjudicate claims.

o. To disclose information, when an individual to whom a record pertains is mentally incompetent or under other legal disability, to any person who is responsible for the care of the individual, to the extent necessary.

p. To disclose to the agency-decision, or other written communications issued to the employee, in connection with an examination ordered by "the agency under—

(1) Medical evaluation (formerly Fitness for Duty) examinations procedures; or

(2) Agency-filed disability retirement procedures.

q. To disclose to a requesting agency, organization, or individual the home address and other information concerning those individuals who it is

reasonably believed might have contracted an illness or been exposed to or suffered from a health hazard while employed in the Federal workforce.

r. To disclose information to a Federal agency, in response to its request or at the initiation of the agency maintaining the records, in connection with the retention of an employee, the issuance of a security clearance, the conducting of a suitability or security investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, or the lawful, statutory, administrative, or investigative purpose of the agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

s. To disclose to any Federal, State, or local government agency, in response to its request or at the initiation of the agency maintaining the records, information relevant and necessary to the lawful, statutory, administrative, or investigatory purpose of that agency as it relates to the conduct of job related epidemiological research or the insurance of compliance with Federal, State, or local government laws on health and safety in the work environment.

t. To disclose to officials of labor organizations recognized under 5 U.S.C. chapter 71, analyses using exposure or medical records and employee exposure records, in accordance with the records access rules of the Department of Labor's OSHA, and subject to the limitations at 29 CFR 1910.20(e)(2)(iii)(B).

u. To disclose the results of a drug test of a Federal employee pursuant to an order of a court of competent jurisdiction where required by the United States Government to defend against any challenge against any adverse personnel action.

v. To disclose information to contractors, grantees, or volunteers performing or working on a contract, service, grant, cooperative agreement or job for the Federal Government.

POLICIES AND PRACTICES OF STORING, RETRIEVING, SAFEGUARDING, AND RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders, on microfiche, in automated record systems, and on file cards, x-rays, or other medical reports and forms.

RETRIEVABILITY:

Records are retrieved by the employee's name, date of birth, social security number, or any combination of those identifiers.

SAFEGUARDS:

Records are stored in locked file cabinets or locked rooms. Automated records are protected by restricted access procedures and audit trails. Access to records is strictly limited to agency or contractor officials with a bona need for the records.

RETENTION AND DISPOSAL:

The EMF is maintained for the period of the employee's service in the agency and is then transferred to the National Personnel Records Center for storage, or as appropriate, to the next employing Federal agency. Other medical records are either retained at the agency for various lengths of time in accordance with the National Archives and Records Administration's records schedules or destroyed when they have served their purpose or when the employee leaves the agency. Within 30 days after the individual separates from the Federal service, the EMF is sent to the National Personnel Records Center for storage. Destruction of the EMF is in accordance with General Records Schedule-1(21). Records arising in connection with employee drug testing under Executive Order 12564 are generally retained for up to 3 years. Records are destroyed by shredding, burning, or by erasing the disk.

SYSTEM MANAGER AND ADDRESS:

Assistant Director for Workforce Information, Personnel Systems and Oversight Group, U.S. Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains records on them should follow the appropriate procedure listed below.

a. Current Employees. Current employees should contact their employing agency's personnel, dispensary, health, safety, medical, or other designated office responsible for maintaining the records, as identified in the agency's internal issuance covering this system. Individuals must furnish such identifying information as required by the agency for their records to be located and identified.

b. Former employees. Former employees should contact their former agency's personnel, dispensary, health, safety, medical, or other designated office responsible for maintaining the records, as identified in the agency's internal issuance covering this system. Additionally, for access to their EMF, they should submit a request to: OPF/EMF Access Unit, Office of Personnel

Management, P.O. Box 18673, St. Louis, Missouri 63118.

Requests to the Office's OPF/EMF Access Unit in St. Louis, Missouri, must submit the following information for their records to be located and identified:

1. Full name.
2. Date of birth.
3. Social security number.
4. Agency name, dates, and location of last Federal service.

RECORDS ACCESS PROCEDURE:

a. Current employees should contact the appropriate agency office as indicated in the Notification Procedure section and furnish such identifying information as required by the agency to locate and identify the records sought.

b. Former employees should contact the appropriate agency office as indicated in the Notification Procedure section and furnish such identifying information as required by the agency to locate and identify the records sought. Former employees may also submit a request to the Office's OPF/EMF Access Unit in St. Louis, Missouri, for access to their EMF. When submitting a request to the Office's OPF/EMF Access Unit in St. Louis, Missouri, the individual must furnish the following information to locate and identify the record sought:

1. Full name.

2. Date of birth.
 3. Social security number.
 4. Agency name, date, and location of last Federal service.
 5. Signature.
- c. Individuals requesting access must also comply with the Office's Privacy Act regulations on verification of identity and access to records (5 CFR part 297).

CONTESTING RECORDS PROCEDURE:

Because medical practitioners often provide differing, but equally valid medical judgments and opinions when making medical evaluations of an individual's health status, review of requests from individuals seeking amendment of their medical records, beyond correction and updating of the records, will be limited to consideration of including the differing opinion in the record rather than attempting to determine whether the original opinion is accurate.

Individuals wishing to amend their records should—

a. For a current employee, contact the appropriate agency office identified in the Notification Procedure section and furnish such identifying information as required by the agency to locate and identify the records to be amended.

b. For a former employee, contact the appropriate agency office identified in

the Notification Procedure section and furnish such identifying information as required by the agency to locate and identify the record to be amended. Former employees may also submit a request to amend records in their EMF to the system manager. When submitting a request to the system manager, the individual must furnish the following information to locate and identify the records to be amended:

1. Full name.
2. Date of birth.
3. Social security number.
4. Agency name, date, and location of last Federal service.
5. Signature.

c. Individuals seeking amendment of their records must also follow the Office's Privacy Act regulations on verification of identity and amendment of records (5 CFR part 297).

RECORDS SOURCE CATEGORIES:

Records in this system are obtained from—

- a. The individual to whom the records pertain.

b. Agency employee health unit staff.

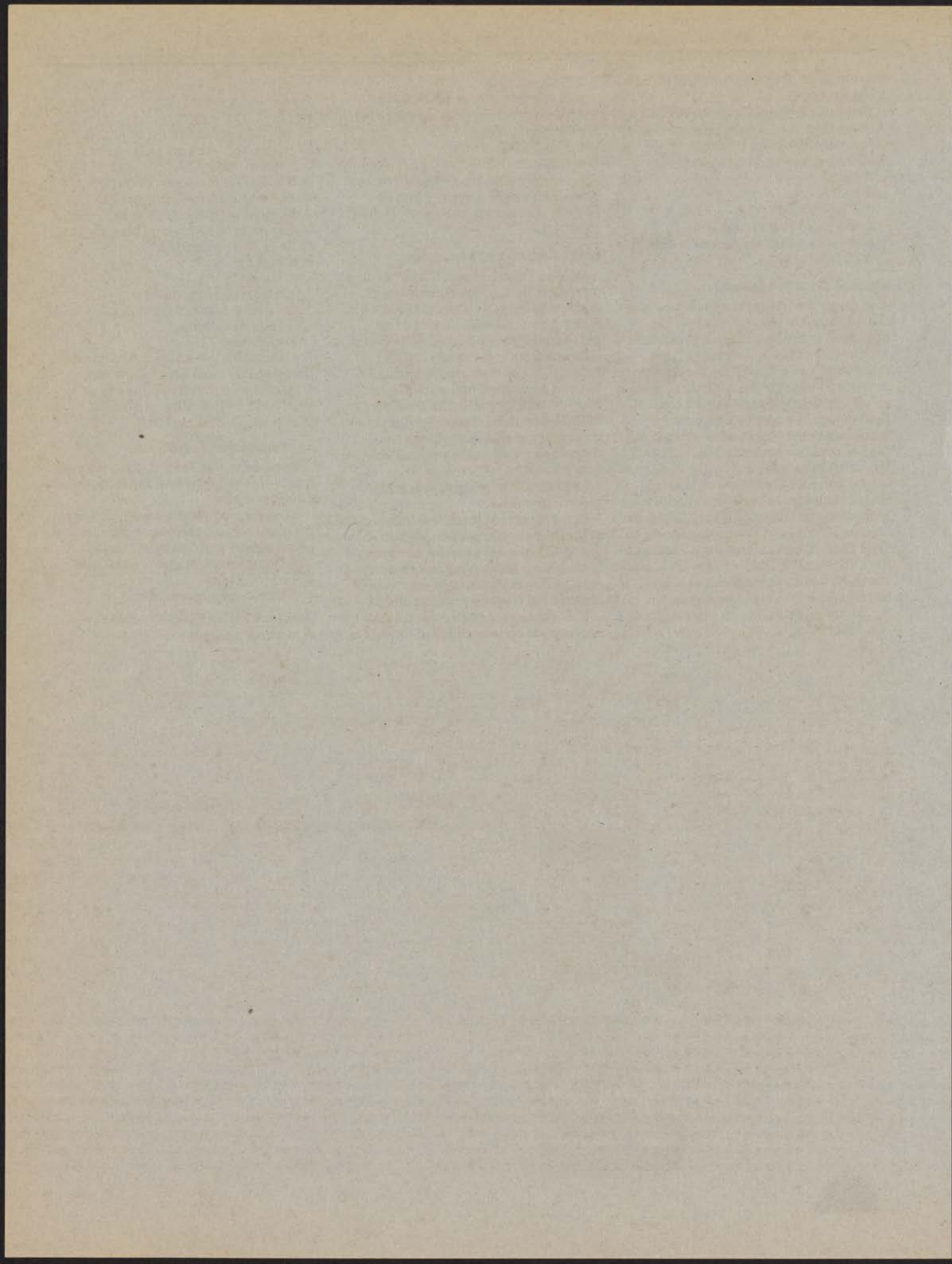
c. Federal and private sector medical practitioners and treatment facilities.

d. Supervisors/managers and other agency officials.

e. Other agency records.

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Monday
August 10, 1992

Part IV

**Resolution Trust
Corporation**

12 CFR Part 1617

**Minority and Women Outreach and
Contracting Program; Interim Final Rule**

RESOLUTION TRUST CORPORATION**12 CFR PART 1617**

RIN 3205-AA08

Minority and Women Outreach and Contracting Program**AGENCY:** Resolution Trust Corporation.**ACTION:** Interim final rule.

SUMMARY: The Resolution Trust Corporation (RTC) hereby promulgates an interim final rule pursuant to the requirement of section 1216(c) of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA). The intent of the rule is that RTC identify, promote, and certify eligible firms for inclusion in its contracting activities, at the same time assuring that RTC utilization of the services of the private sector is accomplished in a practicable and efficient manner. In order to accomplish this objective of maximizing the inclusion of minorities and women, and firms owned by minorities and women, RTC has deemed it appropriate to design a program which will aggressively reach out to minorities and women and firms owned by minorities and women to enable them to participate more fully in RTC contracting activities through the use of joint venture agreements and other devices. In addition, pursuant to a recent statute, the RTC will provide incentives (i.e., cost and technical bonuses) in evaluating competitive offers to contract, to firms owned by minorities and women.

As well as covering contracting in general, the rule governs the identification, promotion, and certification of eligible law firms for inclusion in the RTC legal services contracting process.

Comment is solicited on all matters pertaining to this interim final rule.

DATES: This interim final rule is effective August 10, 1992. Comments must be received by October 9, 1992.

ADDRESSES: Written comments regarding the interim final rule should be addressed to John M. Buckley, Jr., Secretary, Resolution Trust Corporation, 801 17th Street, NW., Washington, DC 20434-0001. Comments may be hand-delivered to Room 314 on business days between 9 a.m. and 5 p.m. Comments may be inspected in the Public Reading Room, 801 17th Street, NW. between 9 a.m. and 5 p.m. on business days. (Phone number: 202-416-6940; FAX 202-416-4753.)

FOR FURTHER INFORMATION CONTACT:

On issues relating to non-legal contracting, Johnnie B. Booker, Assistant

Vice President, Department of Minority and Women's Programs, Resolution Trust Corporation, 801 17th Street, NW., Washington, DC 20434-0001, 202-416-6925; on issues relating to contracting with law firms, Mary A. Terrell, Legal Division, 202-736-3073. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:**A. Background**

FIRREA, enacted on August 9, 1989, amended the Federal Home Loan Bank Act (12 U.S.C. 1421, *et. seq.*) by adding section 21A, which established the RTC. Section 21A(b) (11) (A) (ii) provides that, in carrying out the duties of the RTC, the services of independent contractors shall be utilized if deemed practicable and efficient by RTC. FIRREA, at section 1216 (12 U.S.C. 1833e) additionally required RTC to prescribe regulations to establish and oversee a minority and women outreach program to ensure inclusion, to the maximum extent possible, of minorities and women and entities owned by minorities and women in contracting activities of RTC.

On August 15, 1991, (56 FR 40484) the RTC published in the *Federal Register* an interim final rule (12 CFR part 1617) to govern the outreach portion of the program. The Interim Final Rule also provided standards for qualifying as a minority- or women-owned business (MWOB) or minority- or women-owned law firm (MWOLF) for purposes of the program. Public comment was solicited, and 57 comments were received.

In November of 1991, Congress passed the RTC Refinancing, Restructuring, and Improvement Act of 1991 (RRIA). The RRIA required, among other things, that in evaluating contract offers, the RTC provide technical preferences of at least 10 percent and cost preferences of at least 5 percent to MWOBs. The RRIA also gave the RTC authority to adjust the level of those preferences as necessary.

B. The August 15, 1991 Interim Final Rule (1991 Rule)

The 1991 Rule set forth the scope of the RTC's Minority and Women Outreach and Contracting Program (MWOC) and set out as its mission the identification, promotion, and certification of appropriate entities for inclusion in RTC contracting activities. In adopting the interim final rule, the RTC observed that the interim final regulation was not intended to govern RTC's procedures regarding preferences in the evaluation of contract proposals by MWOB firms. However, subsequent to the comment period, Congress, through the RRIA, mandated that the

RTC adopt cost and technical bonus provisions, or other measures to increase the number of contracts awarded to MWOB firms. Accordingly, this current interim final rule incorporates such measures.

The RTC's outreach efforts to minorities and women include other matters beyond contracting. They also include outreach to potential purchasers of assets from savings associations under the RTC's control, and to potential acquirors of such savings associations. The regulation, however, addresses only the RTC's contracting program.

C. Discussion of Comments

The following discussion summarizes comments and provides the RTC's response to those comments. All comments were considered, even if not specifically addressed.

1. Methods for Increasing Awards to MWOBs

Virtually all commenters stated that the regulation must contain cost and technical bonuses in order to be effective. No commenter opposed the use of bonuses. A bank proposed raising the cost bonus to 5 percent. A minority contractor proposed increasing the cost and technical bonus to 10 percent. An accounting firm proposed increasing the cost bonus to 5 percent. The Rainbow Coalition stated that there is an imbalance in awards. To correct this, the Coalition proposes increasing the technical bonus to 15 percent for minorities, while giving a 10 percent bonus to contractors owned and controlled by white women. The Coalition proposes that the cost bonus be increased to 10 percent, the level assertedly granted by other Federal agencies including the Department of Defense. Other commenters generally support the use of bonuses.

Due to the mandate of the RRIA, the RTC is incorporating cost and technical bonuses in the final rule. In addition to being statutorily mandated, the RTC believes that bonuses are a reasonable measure to correct imbalances in the award of contracts to MWOBs vis-a-vis other segments of the contracting community, and can be reasonably tailored to maintain opportunities for other contractors who are capable of performing RTC contracts. Through devices such as awarding bonuses to joint ventures that include MWOBs, and awarding bonuses to prime contractors that subcontract significant portions of contracting work to MWOBs, the bonus system that is incorporated in the final rule is designed to provide incentives for both MWOBs and others to work

together to meet the RTC's statutory obligations.

A law firm proposes expanding the bonus system to majority contractors who have minority and women principals or have their own outreach program for minorities and women. This firm states that its program has progressive goals for increasing the percentage of women as shareholders. Without such a bonus system, the commenter argues, qualified women and minority professionals in majority firms will be effectively penalized. A female contractor argues that RTC should give bonuses to contractors who have significant levels of minorities and women as employees. Management is not the relevant determination as whether a firm is fostering participation of minorities or women.

The RTC agrees with the thrust of this comment. While it is not empowered to award bonus points to such firms, it is setting a goal to foster the use of law firms that use minorities or female lawyers on RTC related legal work.

Several commenters support bonuses for majority firms that use minority subcontractors. The contractor asserts that the 25 percent threshold should include mandatory subcontracts, and that some subcontracts should be non-competitively awarded to MWOBs.

The RTC agrees that one of the more efficient means of fostering MWOB participation is through subcontracting. The interim final rule contains several provisions that provide incentives for contractors to subcontract substantial amounts of work (with commensurate fees) to MWOBs. In addition, contractors are reminded that subcontracting to MWOBs, wherever feasible, is an RTC policy, and the evaluation of each contractor's performance will in part be based upon compliance with this policy.

Several commenters assert that the bonus system needs to be more rational. The commenters argue that the percentage of the bonus should be derived from the effect of bonuses to date, and should correlate with the scores that minority firms have been receiving on their contract offers. A commenter recommends a two tier or a sliding scale bonus system, with larger bonuses for MWOBs that qualify on their own than for joint ventures or subcontracting arrangements.

The RTC agrees with this comment. The interim final rule contains a tiered bonus system that is designed to reflect different levels of MWOB participation. Consistent with its augmented authority under the RRIA, the RTC may periodically adjust the bonus points to correlate to the results of its program.

2. Non-Competitive Awards

Several commenters assert that the RTC should place substantial reliance on sole source awards to increase MWOB participation. Another commenter asserts that a certain percentage of contracts (30 percent is suggested) be set aside for MWOB contractors. The Rainbow Coalition recommends that minority vendors be given right of first refusal on any noncompetitive contract below \$25,000. The Coalition recommends that, if such a contract is awarded to a non-minority, there must be a written justification and a record of the attempts that were made to contract with minorities first. Another commenter argues that the RTC should develop portfolios for direct award to minorities.

In the new interim final rule, the RTC reserves the right to award non-competitive contracts in appropriate circumstances, using established RTC contractor selection procedures. However, the RTC intends to rely upon preferences and goals as much as possible to stimulate MWOB participation in a competitive environment.

3. Other Proposals to Increase MWOB Participation

Commenters support targeting minority contracting goals to equal the percentage of MWOBs in the database. It is asserted that, if such an approach is followed, contracting goals should be changed periodically to reflect changes in the number of registered firms. One commenter recommends that any contractor awarded a contract worth more than one million dollars should be required to have mandatory MWOB participation, and that the successful bidder should be required to document its effort to employ minorities and report this information at least twice a year.

4. RTC Response to Comments Regarding Increasing MWOB Participation

The RTC closely monitors the progress in the percentage of contracts and fees awarded to MWOBs, and is committed to increasing current levels of participation. The RTC expects that implementation of its augmented outreach program and authority to award cost and technical preference points will increase that percentage to 30 percent over the next year. The RTC expects that the percentage of awards will be commensurate with the percentage of fees paid to MWOBs. It is expected that, over the next year, the Division of Legal Services will increase the level of legal fees paid on new

assignments to MWOBs to at least 20 percent. In addition, it is expected that at least 10 percent of the fees paid over the next year to law firms will be for services performed by minorities or women in non-MWOB firms. The RTC understands that these projections may represent a substantial increase in the amounts paid to these firms. However, the RTC believes that there is a substantial pool of qualified MWOBs, MWOBs, or minorities or women in non-MWOB firms, and that this pool can competently perform the higher levels of work that the RTC would assign to them.

5. Joint Ventures

Most commenters suggested improvements to the Joint Venture program. One MWOB suggested that the joint venture definition include two different types of contractors, such as a property manager and a loan underwriter. A minority contractor and a woman-owned contractor suggested that the joint venture concept might actually be detrimental in that non-minority contractors are given a false incentive to deal with MWOBs. An association of minority contractors elaborated on this point by asserting that no contract should be awarded unless 25 percent of the work is to be performed by MWOBs, and that performance of asset managers and other contractors should be evaluated by their use of MWOB firms. They added that outside firms should be used to audit the use of MWOBs. Several commenters suggested that bonuses should be correlated to the percentage of work performed by MWOBs. The MWOB contractor asserted that "stand alone" minority firms should be awarded a bonus twice that awarded to joint ventures. To be eligible for a bonus, a joint venture should have at least 40 percent minority participation. Treating a contractor who gives 25 percent of the contractual duties to minority subcontractors as a joint venture is "repugnant and insulting." This provision will have the unintended effect of preventing participation of minorities as prime contractors. The Rainbow Coalition suggested that the minimum level of MWOB participation in joint ventures be raised from 25 percent to 33 percent. They also recommended that there be a sliding scale for bonuses up to 50 percent participation. A group of three MWOBs and a trade association recommended that joint ventures be at least 51 percent controlled by minorities or women.

In the RRIA, Congress directed the RTC to award bonuses (described in the

statute as "preference points") to joint ventures that include at least 25 percent MWOB participation. However, the RTC agrees with the commenters that MWOB participation should be increased by creating greater incentives for higher levels of MWOB participation in joint ventures and subcontracting arrangements. Accordingly, the interim final rule provides for greater bonuses for MWOBs that qualify on their own, and for contractors who commit to significant levels of subcontracting to MWOBs, than for joint ventures or subcontracting arrangements with lower levels of MWOB participation.

6. RTC Performance

Several MWOBs asserted that the program has been ineffective to date in giving meaningful amounts of work to MWOBs or MWOLs. The Rainbow Coalition asserts that of the SAMDA contracts awarded to date, a disproportionate number have gone to women, particularly white women, as opposed to minorities. Assertedly, white women received 1/3 of the awards from August 1989 through May 1991; only 1.7 percent of the contracts went to black males, and none to black females. Two MWOBs assert that RTC problems are attributable to a lack of clear policies and the lack of a formal internal structure. A minority trade association asserts that MWOBs that have received contracts are subject to slow payment and that there is insufficient time to respond to contract solicitations. Also they assert that the RTC Consolidated Field Offices are inconsistent in structuring their solicitations, and that this discourages MWOBs from bidding and raises questions of fairness.

Commenters suggested some ways to improve performance. Several commenters advocated using outside contractors to monitor the RTC's compliance. Commenters stated that the regulations must be more clear and consistent. Commenters suggested that the most effective, and possibly the only way for RTC to increase minority participation, is to hire minorities to high level positions within the RTC. Better training of employees was also suggested, as was removal of employees who don't carry out the mandate of the program.

A group of MWOBs assert that the scope of the activities covered by the regulation should be clarified. The contractual services included in the program should specifically include managing agent services, auditing services, the national sales program and other asset disposition activities, and financially-assisted sales of insolvent institutions.

While the RTC's efforts to increase MWOB participation have achieved a level of success, the RTC recognizes the need for continuing improvement in its efforts. The RTC has taken steps, which are reflected in the new interim final rule, to increase the profile of its MWOC Program, to facilitate the roles of the program officials and staff, and to increase the training and accountability of all RTC staff.

7. Certification

Several commenters noted that the certification affidavit should require 51 percent ownership and control. A minority contracting specialist asserts that the program needs clear consistent certification requirements but allows that some flexibility is warranted, such as allowing sole proprietorships to use tax return information.

Three commenters addressed the need for verification of certifications. One commenter suggests onsite inspection during the certification process and a recertification every 2 or 3 years, or anytime the company structure has significantly changed. One contractor argues that the regulation should contain a provision regarding de-certification.

The RTC has corrected apparent discrepancies between the 1991 Rule and the requirements of the certification affidavit. The new interim final rule reflects the RTC's recognition of the need for more effective verification procedures.

8. Subcontracting

A commenter argues that sole source subcontracts to MWOBs would be beneficial if limited to firms not affiliated with the contractor and if the services have a readily determinable market price. The prime contractor would have the option of awarding such sole source subcontracts. The commenter also argues that the regulation should clarify whether the award of the subcontracting preference will be as strictly monitored as the preference for joint ventures. The commenter also requests clarification of whether mandatory subcontracting counts towards the 25 percent subcontracting threshold.

The new interim final rule contains provisions to ensure that the subcontracting preference will not be awarded unless the offeror has firmly committed to utilizing MWOB subcontractors. The RTC believes that, for the present, its use of outreach and preferences will be sufficient to increase MWOB participation. On many contracts where subcontracting is feasible, the prime contractor is not

required to follow RTC's competitive contracting procedures to award subcontracts. However, if qualified MWOB subcontractors are available, the RTC would encourage the contractor to hire such contractors and provide incentives for the prime contractor to do so.

9. Eligibility Criteria and Definitions

A commenter argues that to qualify as a member of one of the minority categories, at least "one-half parentage" must be in the relevant group. Another commenter argues there should be a more objective benchmark for experience in running a business to qualify as a MWOB, such as a minimum of 2 years as President of the firm. Two commenters argue that to receive contracts, majority firms should have significant direct involvement from their minority or women associates or partners. Two Congressmen argue that the ownership requirements are too burdensome. The owner should not have to control the Board of Directors and should be allowed to delegate responsibilities.

The new interim final rule contains eligibility criteria that meet the mandates of the RTC's governing legislation and are an attempt to ensure that MWOB participation is indeed increased. They may be modified in the future if they prove, through the RTC's experience, to be unduly restrictive or easily circumvented.

10. RTC Outreach

Several commenters feel there is a need for better communication with minority contractors. Suggestions included using minority trade associations, non-profit organizations, and daily news journals such as The Commerce Business Daily as conduits for information. A commenter complains that it is too difficult to get information about potential contracting opportunities, especially for MWOBs who want mandatory subcontracts. They recommend a posting mechanism for pending solicitations. The information would be posted in RTC Field Offices. A national bank suggests the establishment of a "MWOB Bank" which would maintain a list of eligible MWOBs, with consideration given to the MWOB experience in serving the minority community. Commenters also feel the need for better training by RTC in regard to its contracting.

Four commenters asserted that the program needs goals to be successful. According to these commenters, the Government Accounting Office reported that only 15 percent of RTC's asset

management solicitations went to minority firms. The commenters assert that not enough minority firms are being invited to bid, raising questions whether they are being invited on a proportional basis.

Commenters also recommended that the RTC should use minority contractors with ties to local or regional communities to help identify and foster participation by minority contractors; to monitor compliance with the program; and to prepare quarterly reports regarding the RTC performance. Commenters assert that bidding contracts on a more localized basis will help MWOBs cut their costs and be more competitive.

The RTC is intensifying its efforts to communicate with potential contractors, and to provide effective training. It is compiling a database of qualified MWOBs, and will use a variety of other media resources to increase the level of MWOB participation. The new interim final rule reflects a strengthening of the RTC's outreach efforts, using in-house resources to the extent possible.

Special Programs

Special initiatives will be established by the Washington Office to ensure minorities and women are represented not only in contracting, but in other aspects of RTC activities. These efforts will target and promote minorities and women as potential investors, acquirors of thrift institutions, advisors, and joint venture partners. The Washington Office will establish the following programs.

Asset Sales—Minority Institutions

In an effort to enhance the viability prospects of minority institutions, and in conformance with § 403 of the RTC RRIA of 1991, the RTC will provide for the segregation of loans or other earning assets to be made available to minority institutions or branches under the interim capital assistance provisions of the Act. Such loans or other earning assets will be priced at market price as determined by the RTC.

In general, the RTC will make available loans or other earning assets, on an option basis, in an amount sufficient to offset the liabilities to be capitalized according to the plan submitted by the minority institution to the appropriate regulators, taking into account requirements for liquidity and other regulatory considerations. In no instance will brokered deposits be considered when calculating the amount of liabilities to be assumed or acquired. In implementing this policy, the RTC will coordinate with the appropriate regulators and, upon request, furnish

written notification to the appropriate regulators of the intent to make earning assets available.

When loans made available under this policy are furnished with standard Representations and Warranties, and if called upon under such Representations and Warranties, the RTC will cure any deficiency or provide for the substitution of assets or payment of cash, as will be provided for in any agreement entered into.

All loans or other earning assets made available under such assistance shall be for the purpose of augmenting the operating earnings of the resultant depository institution and will be assumed and expected to be for the account of the resultant depository institution. It is also assumed that these assets are not being purchased for immediate resale.

Minority Investors

The Department of Minority and Women's Programs, in conjunction with the National Sales Center and the Department of Capital Markets, will develop and implement outreach activities to encourage asset purchases by minority and women investors. The RTC is not authorized to offer any price advantages to minority and women investors in the sale of its assets. The outreach activities will focus on explaining the process and available financing options.

Investor Database

Joint ventures initiated to provide pools of venture capital for purchase of RTC assets will be encouraged and promoted through development of an investor database.

The database will be designed to provide a directory of interested minority and women investors for joint purchases of assets with institutional investors and to promote transactions with the Department of Capital Markets, the Department of Resolution, and the National Sales Center. Policies and guidelines, as well as promotional events, will be developed in conjunction with the other divisions.

11. Other Comments

Eight banks argue that the RTC has not complied with the requirement of § 1216 of FIRREA that minority financial institutions specifically receive preferences in the award of contracts. Several commenters recommend that the program be separated into two distinct programs, one for ethnic minority contractors, and one for non-ethnic women. Several commenters including the Rainbow Coalition argue that the Small Business Administration's

(SBA) section 8(a) program (which effectuates 15 U.S.C. 637(a)) should only be used to supplement the RTC's program, not to be a substitute for it. The Rainbow Coalition argues that the Pilot Program should use the SBA definition of minority, and not be more restrictive.

One woman-owned firm commented that the program as presently implemented may constitute reverse discrimination. Two commenters suggested methods of financially assisting MWOBs including advancing them their first month's fees to assist in overcoming cash flow problems; developing a special program for prompt payment to MWOBs; and assigning contracts to financial institutions to permit MWOBs to obtain contract financing. A national bank recommends that the RTC consider investing in MWOB firms that offer to purchase non-minority failed institutions, and that in resolving failed thrift institutions, the RTC should target certain failed institutions for non-competitive acquisition by MWOB financial institutions. The eight banks suggested that to increase minority participation, the RTC should expand utilization of minority- and women-owned financial institutions as depositories or financial agents to the RTC, consistent with section 1204 of FIRREA. This could purportedly be accomplished through the RTC's Standard Asset Management and Disposition Agreement. Several commenters recommend that contractors, including outside counsel, should not receive waivers of the ethics regulations, and that outside counsel should not receive waivers of the fee caps, unless they have a "significant MWOB subcontracting plan" in place.

While several of these recommendations have some merit, the RTC has determined that it is not necessary to incorporate them into the new interim final rule. However, the RTC is always receptive to suggestions by which it can help MWOBs overcome hurdles to their participation in the RTC's contracting activities. In response to particular comments, the RTC notes that it has never viewed its utilization of participants in the SBA's programs as a panacea for fulfilling its statutory obligations. While the section 8(a) program is a valuable adjunct to the RTC's own programs, the RTC has relied upon its own efforts, which will be augmented through the final rule. The RTC also notes that FIRREA contains no requirement that minority financial institutions receive preferential treatment in contracting activities beyond that provided to other MWOBs.

These offerors will, however, receive every consideration offered to other eligible participants in the program.

12. *Issues Relating to Outreach Program for Minority and Women-Owned Law Firms*

The above discussion has focused mainly on the RTC's outreach program for contractors providing services other than legal services. The following discussion applies to the RTC's outreach program for hiring law firms owned by minorities and/or women (MWOLFs), and minorities and women in other law firms.

Comments Regarding MWOLFs

Commenters offered extensive suggestions to improve the legal services portion of the program. It is recommended that the organizational commitment be strengthened. For example, it is recommended that there be an entirely new section of the RTC's Division of Legal Services, headed by an Assistant General Counsel, to operate the program, with senior level employees in each RTC Field Office to oversee it, as well as sufficient numbers of staff attorneys and support staff. It is recommended that the MWOLF Director must represent the RTC at conferences and strengthen the RTC's relationship with the bar and other MWOLF organizations; that there be criteria and guidelines for evaluating managers who have contracting authority; and that oversight and evaluation must involve monthly reports and visits to Field Offices.

It is also recommended that outreach efforts be improved in the following ways. Commenters assert that MWOLFs be provided training on new RTC-specific legal issues, and outreach staff must be trained regarding program directives. The MWOLF staff must meet with MWOLF firms to uncover problems. Tracking and reporting of fees to MWOLFs must be improved, and referral patterns must be analyzed. Policies must be improved in correlation to the above analysis. Firm registration must be continued to increase the number of MWOLFs on the RTC List of Counsel. The Washington Pilot Program should be expanded to the RTC Field Offices. New program initiatives should be encouraged, including subcontracting and joint venturing. In addition, commenters recommended that preferences be awarded to non-MWOLF firms that use minority or women lawyers on RTC work, and that have effective programs for promoting minorities and women within the firm.

The RTC believes there is merit in recognizing non-MWOLF firms that

provide opportunities to minorities and women. The RTC's statutory goals can be partly achieved by awarding preferences and setting goals, based upon the performance of RTC legal services by minorities and women within non-MWOLF law firms.

Therefore, the new interim final rule recognizes that, in the legal services context, individual lawyers may hold a large share of responsibility for the RTC as a client. Therefore, the RTC will track, and will make every effort to increase, the percentage of legal fees attributable to work performed by minority and female lawyers in non-MWOLF firms. As an internal matter, the RTC Division of Legal Services has created the Outside Counsel Management and Minority and Women Outreach Section, to oversee matters relating to outside counsel. One of the top priorities of this section is the implementation of the Minority and Women Outreach Program (MWOP) within the Division of Legal Services. This Division, and the RTC in general, are making necessary administrative and organizational adjustments to ensure that the program is carried out effectively.

Outreach

The RTC has a wide range of needs for legal services in areas such as litigation, transactions, professional liability, and environmental law, among others. In carrying out its responsibilities, the RTC Division of Legal Services and private sector contractors (in particular asset managers) who perform services for the RTC, will engage MWOLFs to the fullest extent possible. The identification and registration of such firms are nationwide in scope and are primarily dependent upon efforts of the RTC legal staff charged with this special effort. All RTC staff responsible for referring matters to legal services providers will be knowledgeable of and promote this effort.

Generally, the RTC Division of Legal Services will identify MWOLFs by:

(a) Obtaining various lists and directories of MWOLFs maintained by other governmental agencies and bar groups;

(b) Targeting appropriate MWOLFs for participation in the RTC's legal services contracting education effort; and

(c) Participating in conventions, seminars, and professional meetings comprised of or attended by MWOLFs.

A major purpose of the MWOLF outreach effort is to reinforce the RTC's commitment to the program and to increase awareness among potential

contractors for legal services of the ability to participate in this program.

The RTC Division of Legal Services field office staffs will enhance the efforts of the outreach program through regular reporting and ongoing tracking of legal matters referred to outside counsel, identifying areas in which MWOLFs are underrepresented. The outreach program will then target its efforts in areas where the database indicates MWOLFs are underrepresented.

Referral

The regulation addresses various methods that will be used by the RTC and its private sector contractors to refer legal work to MWOLFs. The FIRREA requires that the RTC utilize the services of the private sector to the extent that it is practicable and efficient. As the RTC does to a large extent rely upon such private sector contractors, and such contractors have significant responsibility regarding the hiring of outside counsel, it is appropriate that those contractors, as well as RTC employees, adhere to the regulation in this regard.

Certification

Law firms claiming status as MWOLFs will be required to provide sworn certification of that status. To preserve the integrity and foster the objectives of the program, the RTC Division of Legal Services must satisfy itself that the ownership requirements of the program are fulfilled.

The RTC will implement a certification policy and procedure for the MWOLF outreach program that is uniform and consistent, and discourages fraudulent representations. Procedures have been established by which the Division of Legal Services will review, evaluate, and approve certification affidavits from MWOLFs prior to their being placed on the RTC List of Counsel.

Monitoring Performance

The RTC Division of Legal Services' field office staff will provide complete and current data on a regular basis regarding legal services contracting activity. Minority and Women Outreach Coordinators will review and evaluate the reporting and registration databases for the extent of MWOLF participation and will prepare such reports as are necessary for the Washington legal staff.

In addition, all RTC legal staff dedicated to this endeavor will continuously monitor the implementation of RTC procedures, policies, and guidelines for compliance

with the goals of FIRREA to ensure maximum inclusion of MWOLFs in the provision of legal services to the RTC by outside counsel.

The RTC recognizes that the success of this program requires commitment and leadership from senior management. The RTC pledges the continuing involvement of all levels of its legal staff in making this Outreach Program a success.

D. Summary

The RTC is adopting these regulations for the Department of Minority and Women's Programs in order to implement the provisions of section 1216 of FIRREA, which requires the establishment of a minority- and women-owned business outreach program (including the MWOLF provisions) to ensure effective and efficient use of those business entities to support all contracting activities of the Corporation and the requirements of the RRIA, which bolster and supplement the requirements of FIRREA. It is imperative that MWOB enterprises are given fair and equitable opportunities to contract with the RTC. Strict conformance to this regulation shall be enforced.

In light of the passage of the RRIA, which occurred after the issuance of the 1991 Rule, the RTC has decided to issue this rule as an interim final rule. Comment is solicited on all issues pertaining to this interim final rule, as well as to the issues raised in the RRIA.

Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, comments were specifically sought on an initial regulatory flexibility analysis. No comments were specifically filed in response. The following analysis is provided.

a. Reasons, Objectives, and Legal Bases Underlying the Interim Final Regulations

These elements have been discussed elsewhere in the Supplementary Information. Specifically, it has been noted that the RTC is statutorily mandated to provide an outreach contracting program for a certain segment (minority- and women-owned) of small business firms, including law firms. By publishing this interim final regulation the RTC intends to have aggressive outreach to minorities and women and firms owned by minorities and women to enable them to

participate more fully in RTC contracting activities.

b. Small Entities to Which the Interim Final Regulations Would Apply

This element is discussed elsewhere in the Supplementary Information.

c. Impact of the Interim Final Regulations on Small Businesses

Participation in the program is purely voluntary, and is beneficial to the participants. Projected reporting, recordkeeping, and other compliance requirements fall upon the RTC, as described above in the preamble. All MWOB firms will need only to certify as to their status prior to contract award. This requirement will entail only the filling out of a certification form and will not require the use of professional skills for the preparation of special reports or records. The RTC seeks comments on alternative methods of compliance, or reporting requirements.

The RTC expects to increase the volume of legal services performed by MWOLFs. Projected reporting, recordkeeping, and other compliance requirements fall upon the RTC, as described above in the preamble. The MWOLFs will need to complete the law firm application materials and the MWOLF certification. The RTC seeks comments on alternative methods of compliance or reporting requirements.

d. Overlapping or Conflicting Federal Rules

There are no known Federal rules which overlap, duplicate, or conflict with the interim final regulation.

e. Alternatives to the Interim Final Regulation

The RTC has not identified alternatives that would be less burdensome to small businesses and yet effectively accomplish the objectives of the interim final regulation. The RTC has made every attempt to bear the administrative burdens rather than shifting them to prospective contractors.

List of Subjects in 12 CFR Part 1617

Government contracts, Government employees, Lawyers, Legal services, Minority businesses, Savings associations, Women.

For the reasons set out in the preamble, the RTC hereby revises part 1617, title 12, chapter XVI, of the Code of Federal Regulations to read as follows:

PART 1617—MINORITY AND WOMEN OUTREACH AND CONTRACTING PROGRAM

Subpart A—General Provisions

Sec.

- 1617.1 Purpose.
- 1617.2 Policy.
- 1617.3 Contracting objectives.
- 1617.4 Definitions.
- 1617.5 Scope.

Subpart B—Outreach

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Subpart C—Joint Ventures

- 1617.20 General.
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- 1617.22 Establishing joint ventures.
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Subpart D—Subcontracting

- 1617.30 Policy.

Subpart E—Solicitation and Contract Award Guidelines

- 1617.40 Inclusion in solicitations.
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Subpart F—Liaison with Division of Legal Services

- 1617.50 Legal programs unit.

Subpart G—Cost and Technical Bonuses

- 1617.60 Policy.
- 1617.61 Application of technical and cost bonus points.
- 1617.62 Authority to adjust technical and cost bonus points.

Subpart H—Conservatorship Contracting

- 1617.70 Policy and application.

Subpart I—Oversight and Monitoring

- 1617.80 Oversight.
- 1617.81 Monitoring.
- 1617.82 Performance appraisals.
- 1617.83 Incentive awards.

Subpart J—General Provisions Applicable to Law Firms

- 1617.90 Policy and scope.
- 1617.91 Definitions.

Subpart K—Law Firm Outreach

- 1617.100 Identification of MWOLFs.
- 1617.101 Promotion of MWOLFs.
- 1617.102 Compliance.
- 1617.103 Certification.

Subpart L—Law Firm Direct Referral, Joint Venture, and Other Arrangements

- 1617.110 General.
- 1617.111 Direct referral.
- 1617.112 Joint venture/co-counsel referral.
- 1617.113 Other arrangements.

Subpart M—Law Firm Oversight and Monitoring

1617.120 Oversight and monitoring.

Authority: 12 U.S.C. 1441a(t) and 1833e.

Subpart A—General Provisions**§ 1617.1 Purpose.**

(a) Section 1216 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), 12 U.S.C. 1833e, requires the Resolution Trust Corporation (RTC or the Corporation) to prescribe regulations to establish and oversee a minority outreach program to ensure inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women, including financial institutions, investment banking firms, underwriters, accountants, and providers of legal services, in all contracts entered into by the agency with such persons or entities, public and private, in order to manage the institutions and their assets for which the agency is responsible or to perform such other functions authorized under any law applicable to such agency.

(b) This part details the procedures that the RTC will follow to ensure the inclusion of firms owned by minorities and firms owned by women in RTC's contracting for goods and services in connection with its management of savings and loan institutions placed under RTC control and disposition of their assets.

(c) This part applies to all contracting activities engaged in by RTC in any of its capacities, including all contracts with private persons and entities for all RTC functions authorized by law.

§ 1617.2 Policy.

It is the policy of the RTC that minorities and women, and firms owned and operated by minorities and firms owned and operated by women, have the opportunity to participate, to the maximum extent possible, in all relevant contracting activities of the Corporation. The RTC's objective in contracting will be achieved through the establishment of goals using RTC contracting procedures. This applies to contracting for the procurement of goods and services, and the contracting activities of conservatorships and receiverships.

§ 1617.3 Contracting objectives.

The RTC has established standards by which it will evaluate its success in maximizing participation of minority- and women-owned businesses (MWOBs) in its contracting activities. The awards and fees will be tracked separately for minorities and for women.

The RTC's success in meeting its objectives will be evaluated periodically, and modifications to this part will be made as necessary in light of those results.

(a) Each office, including sales centers, must make every effort to raise MWOB participation in accordance with the RTC's objectives.

(b) Contractors are strongly encouraged to utilize joint ventures and subcontracting arrangements with MWOBs to increase MWOB participation. Bonus consideration will be given to contractors that, through joint ventures or subcontracting, achieve specified levels of MWOB participation.

(c) Within 6 months of the date of conservatorship, each conservatorship must bring its contracting activity into compliance with the RTC's Minority and Women Outreach and Contracting (MWOC) Program's policies and procedures.

(d) Evaluation of performance of contractors will include their efforts and success in meeting MWOC Program goals. The RTC will conduct periodic visits or audits of contractors to assess their compliance with RTC MWOC Program policies.

(e) All annual evaluations of performance for senior officials in each RTC office shall include a review of his or her success in meeting the goals and objectives of the MWOC Program.

§ 1617.4 Definitions.

The following definitions apply to §§ 1617.1 through 1617.83.

(a) *Joint venture* means an association of entities and/or individuals, one of which qualifies as an MWOB, formed by written contract to engage in and carry out a specific business venture for which purpose they combine their efforts, resources, and skills for joint profit, but not necessarily on a continuing or permanent basis for conducting business generally.

(b) *Management and daily business operations.* (1) In order for minorities or women to be found to control and manage a business concern, the following must exist:

(i) A minority or woman must hold the position of President or Chief Executive Officer;

(ii) The minority member(s) or woman (women) upon whom eligibility is based shall control the Board of Directors of the firm (if the firm is a corporation);

(iii) The relevant minority member(s) or woman (women) must have directly related managerial or technical experience and competence; and

(iv) Minority group members or women must be directly responsible for

the day-to-day management of the business.

(2) To establish such day-to-day management responsibility, all of the following functions must be performed by the minority or woman President or Chief Executive Officer (or functional equivalent):

- (i) Establishment of company policies;
- (ii) Determination and selection of business opportunities;
- (iii) Supervision and coordination of projects;
- (iv) Control of major expenditures;
- (v) Hiring and dismissing of key personnel;
- (vi) Marketing and sales decisions; and
- (vii) Signature on major business documents.

(c) *Minority* means any Asian American, Black American, Eskimo, Hispanic American, Native American, or Pacific Islander, who is either a citizen or a permanent resident of the United States.

(1) *Asian American*—A person having origins in any of the original peoples of the Far East, Southeast Asia or the Indian Subcontinent.

(2) *Black American (not of Hispanic origin)*—A person having origins in any of the black racial groups of Africa.

(3) *Eskimo*—A person having origin in the Eskimo or Aleutian peoples.

(4) *Hispanic American*—A person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.

(5) *Native American*—A person having origins in any of the original peoples of North America.

(6) *Pacific Islander*—A person having origin in any of the nations commonly referred to as the "Pacific Rim Countries," including the Hawaiian Islands.

(d) *Minority-owned business* means a business concern that is owned and controlled by one or more members of a minority group.

(e) *MWOB* means minority- and women-owned business.

(f) *Owned* means a business which is more than 50 percent unconditionally owned by one or more members of a minority group or by one or more women or, in the case of a publicly-owned business, more than 50 percent of each class of voting stock of which is unconditionally owned by one or more members of a minority group or by one or more women, or, in the case of a partnership, more than 50 percent of the partnership interest is unconditionally owned by one or more members of a minority group or by one or more women.

(g) *Controlled* means a business whose management and daily business operations are controlled by one or more such individuals.

(h) *Unconditional ownership* means ownership that is not subject to conditions precedent, conditions subsequent, executory agreements, voting trusts, shareholder agreements, or other similar arrangements which serve to allow the primary benefits of program participation to accrue to entities or individuals other than those upon whom eligibility for this program is based.

(i) *Women-owned business* means a business concern in which more than 50 percent is owned by, and the business is controlled by, one or more women and a significant percentage of senior management positions are held by women. These senior management positions are enumerated in the definition of "Management and daily business operations" in paragraph (b) of this section.

§ 1617.5 Scope.

Sections 1617.3 through 1617.83 apply to all contracting activities, with the exception of contracting for legal services, engaged in by RTC, in any of its capacities, for all RTC functions authorized by law. These contracts will typically pertain to services such as asset management, accounting services, appraisals, property management, information systems, property maintenance, surveying, general contracting and subcontracting, architectural/engineering consulting, construction consulting, property tax consulting, title work, financial investigation services, marketing, signage and printing services, and related services. Contracting for legal services is governed by §§ 1617.90 through 1617.120.

Subpart B—Outreach

§ 1617.10 RTC organizational responsibilities and staffing.

(a) *Organization.* The RTC will have staff and resources devoted to this program in each of its offices.

(1) The RTC has established a MWOC Program in Washington with an Assistant Vice President to provide direction, consultation, and training to other RTC offices in order to ensure that this program is being effectively and consistently implemented.

(2) There will be three basic functions in this new office:

(i) *Business Program*—to deal with contracting, minority and women investors, and minority institution deposits and ownership;

(ii) *Legal Program*—to establish a liaison and partnership with the Division of Legal Services to ensure that minority- and women-owned law firms (MWOLFs) and minorities and women in non-MWOLF firms receive an equitable share of legal engagements; and

(iii) *Policy Development and Evaluation*—to include oversight and monitoring activities for the program.

(b) *Role of MWOC Program staff.* In each RTC office, the MWOC Program staff is expected to develop and maintain a direct working relationship with the contract, program and sales offices, oversight managers, and conservatorship staff in order to increase the number of contracts and fees awarded, as well as sales transactions, to minority- and women-owned businesses. The MWOC Program staff will:

(1) Monitor all contracting activities of the RTC and its contractors for compliance with this program;

(2) Implement the MWOC certification process;

(3) Increase the MWOC database, and develop geographically based, potential contractor source lists;

(4) Implement training workshops on contracting to increase access to and award of RTC contracts;

(5) Provide complete and up-to-date information on all contracting activities, investment opportunities, and legal services to appropriate interest groups; and

(6) Develop networking forums among minority and women investor groups to promote sales of RTC assets.

(c) *Reporting Authority.* The MWOC Program staff in the RTC Field Offices will report directly to the Assistant Vice President, Department of Minority and Women's Programs, in Washington. This includes the direct oversight and management of the program's implementation in accordance with RTC policy, directives, and procedures. All MWOC Program personnel decisions which include selections, performance appraisals, promotion, and disciplinary actions shall be made directly by the above mentioned Assistant Vice President of Minority and Women's Programs.

§ 1617.11 Program components.

(a) *Outreach.* A continuing effort of the RTC involves identifying MWOCs capable of providing contracting services to the RTC. This effort is nationwide in scope and focuses on networking and training.

(1) *Networking.* Field staff and the Washington Office will network with Federal, State and local governments;

nonprofit organizations; professional and trade organizations; and participate in conventions and seminars sponsored and widely attended by minorities and women. Through these activities, the staff will:

(i) Develop directories of minority- and women-owned firms capable of providing services;

(ii) Target appropriate firms for participation in the RTC's contractor training effort;

(iii) Develop promotional campaigns to inform the minority- and women-owned business community of the Corporation's needs and its commitment to involve such firms in its contracting activities;

(iv) Disseminate information on purchasing RTC assets and thrifts;

(v) Assist program participants in understanding and meeting the RTC's contracting needs, especially as they will be represented in various Solicitations of Services (SOS);

(vi) Determine prospective program participants and identify them as MWOCs in the RTC database, as well as assist them in understanding RTC's regulations governing ethical responsibilities, conflicts of interest, confidentiality, and the certification process as an eligible MWOC.

(2) *Database review.* The Field staff will enhance the efforts of the outreach program through their ongoing review of the MWOC database, identifying geographic and service categories in which firms are underrepresented. The outreach program will target its efforts in areas where the MWOC database indicates MWOCs are underrepresented.

(b) *Training.* The Washington Office will coordinate training initiatives, workshops, and seminars for MWOCs and RTC staff. These activities are designed to increase awareness of the RTC contracting process, regulations, and special initiatives, as well as ensure that all RTC staff who interact with the contracting and investment community are knowledgeable of and support the program. These activities include:

(1) The coordination with Field staff on identifying and targeting technical training needs of MWOC contractors;

(2) The development of training materials and modules for MWOC contractors, and where appropriate, other contractors, to increase MWOC subcontracting;

(3) The coordination with the contracting office on increasing awareness of MWOC Program policies, directives, and program goals and objectives in the contractor training modules for RTC staff; and

(4) The development of an internal education program to promote the awareness of all RTC staff about MWOB firms and the RTC's commitment to their full participation in its activities.

(c) *MWOB media program.* The Department of Minority and Women's Programs will establish a MWOB database program of related information for utilization in promoting training workshops and seminars, procurement and subcontracting opportunities, and the sale of assets.

(d) *Special events.* Special events will be developed to meet needs or concerns of MWOBs. These events may include: "subcontracting trade fairs," "open houses" with SAMDA contractors, investor forums, and coordination of events with the Minority Business Development Agency, Small Business Administration, other governmental entities, and private and nonprofit organizations.

§ 1617.12 Promotion.

(a) The RTC will conduct seminars and workshops within this community. The focus of these encounters will be to provide information regarding the program, its goals and objectives, and companies qualified to participate in the program; facilitate interaction between RTC and this community; and manifest RTC's commitment to doing business with these groups.

(b) Opportunities for MWOBs will be expanded by encouraging both minority- and women-owned firms to form joint venture arrangements and cooperative agreements with majority-owned (i.e. other than MWOB) firms.

§ 1617.13 Certification/verification.

(a) Each firm claiming status as an MWOB will be required to provide certification and verification of that status. To preserve the integrity and foster the objectives of the program, RTC must satisfy itself that the ownership, control, and day-to-day management requirements of the program are fulfilled. On-site visitations/audits will be coordinated with the Office of Contractor Monitoring.

(b) Accordingly, RTC will implement a certification policy and procedure that is uniform and consistent, and discourage fraudulent representations. Procedures will be established by which the Department of Minority and Women's Programs will review, evaluate, and tentatively approve certification affidavits from MWOBs, subject to the verification process, prior to any contract award. Accomplishment of this segment of the program will involve the

procedures in paragraphs (b)(1) through (7) of this section.

(1) The RTC will send all firms selected as offerors a certification affidavit to be completed and submitted with the proposal.

(2) The Department of Minority and Women's Programs will review returned certification documents to assure that the potential participant has qualifying status.

(3) When an MWOB firm is selected for an award, verification procedures, through the mechanism of sitc visit/audit, will be initiated for all contracts with estimated fees of over \$50,000. Verification will also be required when an award will result in an accumulation of over \$50,000 in estimated fees to a contractor. This process applies to those firms that have not been previously verified. Further, the Department of Minority and Women's Programs reserves the right to perform an onsite visitation to firms with fees under \$50,000.

(4) The MWOB firms currently doing business with the RTC are required to complete a new certification affidavit.

(5) The certification confirmation granted MWOB firms will be valid for a period not to exceed 12 months from the date certification/verification is approved. The contractor will be required to inform RTC of any action which changes or affects the MWOB status. Failure to notify RTC of a change in MWOB status will result in adverse actions by the Corporation.

(6) Contracts may be terminated should falsification of self-certification be discovered, with appropriate referrals to the Office of the Inspector General.

(7) Adequate notice will be provided of a determination of ineligibility. An opportunity to respond to such determination will be provided.

Subpart C—Joint Ventures

§ 1617.20 General.

In an effort to encourage and enhance opportunities for MWOBs to gain access and entry to RTC contracting activities, the Corporation supports and promotes the concept of joint ventures. The intention of this promotion is that through such an effort MWOBs will acquire training through the association with a more established or larger firm and will increase resource development opportunities so that MWOB firms may eventually have the expertise and capacity to compete independently.

§ 1617.21 Eligibility.

A joint venture will be eligible for this program if:

(a) Each MWOB is responsible for a clearly defined portion of the work to be performed and holds management responsibilities in the joint venture; and

(b) The MWOB performs at least 25 percent of the duties and is contractually entitled to compensation proportionate to its duties.

§ 1617.22 Establishing joint ventures.

A firm receiving a solicitation from RTC may form a qualifying joint venture with one or more other firms that may or may not have received the solicitation. Each joint venture which is established before receipt of any SOS, and every joint venture engaged by RTC, must have its own Tax Identification Number and must meet RTC's fitness and integrity requirements.

§ 1617.23 Joint venture agreements.

To qualify for bonus considerations the joint venture must provide a copy of its written joint venture agreement to RTC at the time it submits a proposal. That agreement must clearly identify the extent of participation for each firm in the joint venture and address, among other matters, the following:

- (a) The purpose of the joint venture;
- (b) The management structure of the joint venture;
- (c) The percentage of RTC funds earned by the joint venture to be distributed to the MWOB concern and the allocation of losses, if any;
- (d) All major equipment, facilities, and other resources to be furnished by each participant to the joint venture;
- (e) That each party to the joint venture is jointly and severally liable for the liabilities of the joint venture;
- (f) That the MWOB joint venture partner will have the opportunity to represent itself, or will otherwise be represented at all RTC meetings, such as bidders' conferences, debriefings, contract closings and contract oversight reviews; and

(g) That all parties to the joint venture will fully disclose to one another all SOS, task order bids, notices of best and final offers, SOS amendments, notice of awards, contracts and any and all other documents or meetings necessary or relative to the joint venture. Such disclosures must be made to the minority or women venturers before submission of any proposals, bids or offers for contracts with the RTC.

Subpart D—Subcontracting

§ 1617.30 Policy.

(a) The RTC has determined that one of the most effective methods for increasing participation of MWOBs in its contracting activities is the use of

MWOBs as subcontractors. Generally, a suitable level of MWOB subcontracting is 25 percent of the work on a contract. While the ability to subcontract is within the power of the contractor, the RTC will provide incentives, including the award of cost and technical preferences to offerors that commit to subcontracting. Greater incentives will be available to contractors who reach levels of subcontracting greater than 25 percent.

(b) In accordance with RTC's other general requirements for subcontracting activity, the RTC shall satisfy itself that all private sector firms awarded a contract with the RTC will provide the maximum practicable opportunity to minority- and women-owned contractors to participate in subcontracting awards. All RTC contractors must agree to carry out this "maximum inclusion practicable" policy in a manner consistent with RTC's overall contracting policies and procedures.

(c) Bonus considerations are available to any offeror who demonstrates a commitment to subcontract at least 25 percent or more of the work and commensurate fees under a contract to MWOBs. Any offeror that seeks to obtain bonus considerations on a prime contract or task order agreement through subcontracting work to MWOBs must submit with its proposal a subcontracting plan.

(d) The subcontracting plan must include within the proposal:

(1) Specific roles and responsibilities of the MWOB subcontractors;

(2) Separate percentage goals for using minorities and women as subcontractors (how many minorities and how many women);

(3) Previous experience working with MWOB firms;

(4) Estimated dollar amounts of participation of MWOB subcontractors;

(5) The name of an individual employee of the offeror who will be charged with administering the offeror's subcontracting program and a description of the duties of the individual;

(6) A description of the efforts the offeror will make to ensure that minority- and women-owned contractors will have an equitable opportunity to compete for subcontracts; and

(7) Assurances that the offeror will cooperate in any oversight, review, study or surveys as may be required.

(e) Implementation factors:

(1) After contract award, names of contractors firms that will receive work through subcontracting must be

provided, as well as the amount of work and compensation.

(2) The Department of Minority and Women's Programs shall act as liaison to RTC oversight managers for consultation on MWOB issues.

(3) The Department of Minority and Women's Programs shall monitor, oversee, and provide assistance to RTC contractors to carry out the subcontracting policy.

(4) The contractor will be required to submit periodic reports to the contracting office in order to allow RTC to determine the extent of compliance by the contractor with the subcontracting plan. Summary subcontracting reports will be required in accordance with RTC instructions.

(5) The contractor's subcontracting plan shall apply throughout the life of the specific task order.

(6) The RTC will evaluate as part of the contractor's performance the utilization of minority- and women-owned contractors in the contractor's subcontracting program. This evaluation will be used by RTC to recommend the contractor for monetary incentives. When using any contractual incentive provisions based upon rewarding the contractor for exceeding goals, RTC must ensure that the goals are realistic and any rewards for exceeding the goals are commensurate with the efforts the contractor would not have otherwise expended.

Subpart E—Solicitation and Contract Award Guidelines

§ 1617.40 Inclusion in solicitations.

RTC policies and guidelines will ensure to the maximum extent possible that MWOB firms are included in each contract solicitation. This may be achieved by, among other methods, soliciting proposals for asset managers to manage small, homogeneous, geographically concentrated asset pools. For noncompetitive contracts under \$5,000, MWOB firms shall be given first consideration.

§ 1617.41 Right to award contracts reserved.

The RTC reserves the right to award a contract directly to a MWOB either by technical competition or by non-competitive award.

§ 1617.42 Participation by the Department of Minority and Women's Programs in solicitation and award process.

(a) The Department of Minority and Women's Programs' staff will have the opportunity to participate in the initial review and Statement of Work meeting with the requesting program office and Legal Division to establish milestones,

specific task descriptions, and contractor responsibilities. The Department of Minority and Women's Programs will have the opportunity to participate in the Source Selection Plan process to assure inclusion of MWOB firms. The Department of Minority and Women's Programs will assure:

(1) Selection criteria for notices or issuance of SOSS;

(2) Advertising language; and

(3) The contract parameters are fair, equitable, and consistent with the contract requirements. This includes reasonable standards for most important, more important, important factors, and scoring criteria.

(b) The contracts office shall receive questions either in written form or by offerors' meetings from offerors and develop answers in consultation with the Program Office, Legal Division, and MWOC Program representatives.

(c) The Department of Minority and Women's Programs staff will have the opportunity to participate or have concurrence in the Technical Evaluation Process. After the technical evaluation, scoring material shall be available for review and concurrence by the Program Office, Legal Division, and the Department of Minority and Women's Programs.

(d) The Department of Minority and Women's Programs shall concur on the assignment of technical and cost bonus points prior to selection to the competitive range.

(e) In the post award phase, the Department of Minority and Women's Programs shall participate in MWOB debriefings and contractor performance evaluations.

(f) The Department of Minority and Women's Programs, in conjunction with the contracting monitoring office, will conduct quarterly and annual site visitations to Standard Asset Management and Disposition Agreement (SAMDA) contractors to review for contractor compliance with MWOC Program policy and procedures.

(g) In order to diversify the contractor base and increase competition among MWOBs, the RTC will implement smaller contract assignments, such as the reduced portfolio size for SAMDAs.

Subpart F—Liaison With Division of Legal Services

§ 1617.50 Legal programs unit.

(a) The Department of Minority and Women's Programs will establish a Legal Programs Unit to provide oversight and monitoring of legal referrals to MWOLFs and minorities and women in non-MWOLFs. This unit will

coordinate activities with the Division of Legal Services' Outside Counsel Management Section to identify MWOLFs and enhance contracting opportunities through direct referrals, joint venture/co-counsel referrals, or other arrangements.

(b) The Department of Minority and Women's Programs will coordinate with the Division of Legal Services the monitoring of RTC SAMDA contractors to ensure that SAMDA contractors are aware of, adopt and adhere to, all RTC policies and procedures to contract with MWOLFs approved by the Division of Legal Services.

(c) The Department of Minority and Women's Programs will have the opportunity to participate on the Legal Services Committee to ensure that the evaluation of MWOLFs for potential outside counsel engagements is fair and follows RTC's policies and procedures. Where applicable to the method of engagement, technical and cost bonuses will be allocated to MWOLFs, and non-MWOLFs that joint venture with other MWOLFs.

Subpart G—Cost and Technical Bonuses

§ 1617.60 Policy.

In the review and evaluation of proposals submitted by firms eligible as MWOBs, or MWOB joint ventures with an eligible subcontracting plan, the Corporation shall provide additional incentives in the technical and cost relating process.

§ 1617.61 Application of technical and cost bonus points.

(a) Technical bonus points will be awarded as a percentage of the total technical points achievable in the rating process in addition to each offeror's technical score.

(b) Cost bonus points will be awarded as a percentage of the total cost points achievable in the rating process in addition to each offeror's cost score.

(c) Beginning May 1, 1992, the technical and cost bonus points shall be allocated as follows:

Firm type	Technical (percent)	Cost (percent)
MWOB	10	5
Joint Venture (JV) with 40% and above MWOB participation	10	5
JV with at least 25% MWOB participation	5	2.5
Non-MWOB firms with subcontracting plan of 40% MWOB participation	10	5

Firm type	Technical (percent)	Cost (percent)
Non-MWOB firms with subcontracting plan of at least 25% MWOB participation	5	2.5

(d) The Department of Minority and Women's Programs will review bonus points assignment upon conclusion of the technical evaluation by the technical evaluation panel and the cost evaluation by the contracts office, prior to determining the competitive range. All MWOB issues will be resolved by the Director, Office of Contracts, and the Assistant Vice President, Department of Minority and Women's Programs.

§ 1617.62 Authority to adjust technical and cost bonus points.

(a) The Department of Minority and Women's Programs will evaluate the Corporation's application of bonus points annually. This annual review will determine if the Corporation is meeting the mandate to ensure the maximum participation possible for MWOBs and the need to adjust the bonus points.

(b) The Assistant Vice President of the Department of Minority and Women's Programs may grant authority to adjust upward the technical and cost bonus points applicable in evaluating proposals to the extent necessary to ensure the maximum participation for MWOBs.

Subpart H—Conservatorship Contracting

§ 1617.70 Policy and application.

(a) The RTC recognizes the role of the conservatorships in ensuring inclusion of MWOBs in the RTC contracting and disposition activities to the maximum extent possible. Within 6 months after the institution has been placed into conservatorship, each conservatorship shall comply with RTC MWOC Program policies and procedures.

(b) Accordingly, it is the responsibility of the conservatorship and contracting department to provide the Department of Minority and Women's Programs with an opportunity to review and concur on:

- (1) Requests for contracting services;
- (2) SOS lists;
- (3) SOS, contract, Statement of Work;
- (4) Other contracting documents;
- (5) Application of MWOB bonus points; and

(6) Certification/verification of contractor's MWOB status.

(c) In addition, the Department of Minority and Women's Programs will have the opportunity to participate in conferences, debriefings, negotiation

meetings, best and final interviews, and any other meetings between RTC and MWOB contractors.

(d) Because of the large number of small awards emanating from conservatorships, the conservatorships are encouraged in all sole source contracts to give preference to local MWOBs. The MWOC Program staff at the RTC Field Office shall be notified if the conservatorship contracting office cannot locate qualified MWOBs for contracting purposes prior to soliciting for services.

Subpart I—Oversight and Monitoring

§ 1617.80 Oversight.

(a) The RTC recognizes that the success of this program involves commitment and leadership from senior management. The RTC pledges the continuing involvement of all levels of its staff in making this program a success. The Department of Minority and Women's Programs, Office of Policy, Evaluation and Field Management will have responsibility for oversight and monitoring functions.

(b) In order to achieve the objectives in paragraph (a) of this section, all offices will report the extent of their involvement in the program, including the number of contractors participating in the SOS process and the number of contracts awarded. Further, all offices in RTC shall review an RTC contractor's MWOB subcontracting activities on a quarterly basis. The contractor must demonstrate a good faith effort to follow the objectives of the MWOC Program and such effort shall be evaluated as part of the RTC contract performance evaluation conducted by RTC oversight managers. Determination as to conformance shall be the right and sole responsibility of RTC.

(1) Field Office staff will provide complete and current data regarding RTC contracting activity;

(2) The MWOC Program staff in the field will review and evaluate the reporting and MWOB databases for the extent of MWOB participation and will prepare such reports for the Washington staff;

(3) The Washington Department of Minority and Women's Programs will prepare reports for dissemination to management, Congress, and the public.

§ 1617.81 Monitoring.

(a) Policy Development and Evaluation staff dedicated to this effort will continuously monitor the usage of RTC policies, procedures, and guidelines for compliance with the goals of FIRREA to ensure maximum inclusion of

MWOBs in the management and disposition of assets of failed thrift institutions. A site visitation program will be established utilizing a uniform assessment process. Each RTC Field Office will be visited periodically by the Policy and Evaluation staff to:

(1) Assess effectiveness of the MWOC Program;

(2) Conduct interviews concerning the program and procedures; and

(3) Make recommendations to facilitate uniform attainment of the MWOC Program goals and objectives.

(b) Adherence to and assistance with MWOC Program policies shall be reflected in RTC Personnel Appraisals to encourage performance and maintain individual accountability.

§ 1617.82 Performance appraisals.

(a) *Supervisory performance appraisal.* All annual evaluations of performance for Washington and Field Office supervisors shall include a review of his/her level of participation in and enhancement of the Corporation's efforts of including MWOBs in all aspects of the Corporation's business opportunities, to the maximum extent possible.

(b) *Annual performance appraisal.* All annual evaluations of senior officials shall include a review of his/her ability and willingness to work with both internal staff members promulgating the importance of the MWOC Program, as well as with MWOBs, including investors, goods/service contractors, and law firms, capable of assisting in the management and disposition of RTC assets.

§ 1617.83 Incentive awards.

(a) *Award criteria.* The granting of incentive awards and bonuses to senior staff will take into consideration in significant part the senior manager's ability to show during the calendar year:

(1) A significant percentage increase in the number of contracts awarded to MWOBs;

(2) A significant percentage increase in the number of MWOB subcontractors on SAMDA contracts;

(3) A significant percentage increase in the number of MWOBs on SOS lists; and

(4) A significant percentage increase in the fees paid to MWOBs.

(b) *Special MWOC Program Award.* In conjunction with the RTC's Director of the MWOLF Program, a special MWOC Program award will be created for presentation during the Annual Awards Ceremony in December for any outstanding contribution to the Program during the calendar year.

Subpart J—General Provisions Applicable to Law Firms

§ 1617.90 Policy and scope.

(a) It is the policy of the RTC to ensure that MWOLFs and minorities and women in non-MWOLFs, have the opportunity to participate, to the maximum extent possible, in all legal services contracted for by the RTC Division of Legal Services, including legal services contracted for the RTC by private sector contractors. Every employee of the RTC has the affirmative duty to identify and seek to remove any barrier to the maximum possible participation by MWOLFs, and minorities and women in non-MWOLFs, in the RTC's legal services contracting activities.

(b) This policy applies to all contracting for legal services engaged in by the RTC Division of Legal Services (including contracting by private sector contractors for the RTC) including services provided directly to the Corporation, and services provided to conservatorships and receiverships. It applies to legal services including, but not limited to, litigation, transactions, bankruptcy, bond claims, director and officer liability, and other areas of law specific to the RTC Division of Legal Services.

§ 1617.91 Definitions.

The following definitions apply for the purposes of §§ 1617.91 through 1617.120.

(a) *List of Counsel.* The list of performing law firms that are on the RTC Division of Legal Services, computer database and are eligible to perform legal services for the RTC. Only law firms on this list may have legal matters referred to them.

(b) *Minority.* See the definitions of § 1617.4(c) of subpart A of this part.

(c) *Minority-owned law firm.* A law firm with more than 50 percent of the ownership or control that is held by one or more members of a minority group, all of whom are attorneys in good standing with the bar licensing authority of the pertinent State or other jurisdiction.

(d) *Minority and Women Outreach Coordinator (L-MWOC).* A person in each RTC Division of Legal Services field office designated to serve as liaison with MWOLFs and minorities and women in non-MWOLFs within the pertinent geographical area.

(e) *MWOLF.* A minority- or women-owned law firm.

(f) *Private sector contractor.* Any person or entity that performs services on behalf of the RTC pursuant to contract, including, but not limited to, an asset manager.

(g) *Women-owned law firm.* Any law firm or practice wherein:

(1) More than 50 percent of the ownership or control is held by one or more women;

(2) More than 50 percent of the net profit or loss accrues to one or more women;

(3) A significant percentage of senior management positions are held by women; and

(4) All attorneys within the firm are in good standing with the respective licensing authority of the State or other jurisdiction.

Subpart K—Law Firm Outreach

§ 1617.100 Identification of MWOLFs.

(a) *General.* The RTC will design and implement a program, nationwide in scope, to identify MWOLFs capable of meeting the legal services contracting needs of the RTC. Program personnel will network with State and local bar associations, and other entities, and will participate in professional conventions and seminars sponsored and widely attended by MWOLFs.

(b) *Specific elements.* The identification effort will:

(1) Identify MWOLFs nationwide.

(2) Update firm profiles for all MWOLFs on the List of Counsel.

(3) Conduct surveys to determine the distribution of matters referred to MWOLFs.

§ 1617.101 Promotion of MWOLFs.

(a) *General.* The RTC will conduct and participate in seminars and workshops for MWOLFs with a focus on providing information on the MWOLF outreach program, its goals, and objectives. The RTC will train its employees and private sector contractors regarding the program. Furthermore, RTC employees will participate in seminars and workshops conducted by others regarding relevant topics.

(b) *Specific elements.* The promotional effort will include:

(1) Development of a promotional campaign to inform the legal community, and in particular the women and minority legal community, of the RTC Division of Legal Services' needs and its commitment to the MWOLF outreach program.

(2) Networking with national, State, and local bar organizations to facilitate interaction between the RTC Division of Legal Services and MWOLFs.

(3) Expansion of contracting opportunities by encouraging MWOLFs to form joint ventures/co-counsel or other affiliations with non-MWOLFs or other MWOLFs.

(4) Fostering referral of legal matters to MWOLFs by RTC private sector contractors.

(5) Provision of law firm application materials and guidance regarding their completion to firms that have been identified as MWOLFs.

(6) Ensuring that all RTC staff that interface with the legal services contracting community are knowledgeable of, and adhere to, the principles stated in this part.

§ 1617.102 Compliance.

Compliance with this part will be achieved by the designation of individuals as L-MWOCs in each Field Office to ensure that the policies and goals of the program are fulfilled. The L-MWOCs in the field will report jointly to their respective field supervisors and to the Senior Counsel for the Minority and Women Outreach Unit in Washington. At the RTC Legal Division Headquarters Office, the Senior Counsel for the Minority and Women Outreach Unit will be directly responsible for the overall implementation of the program. The objectives of the outreach program will be made part of those individual's job description.

§ 1617.103 Certification.

(a) Firms claiming status as MWOLFs will be required to provide certification of that status.

(b) A certification affidavit will be sent to all MWOLFs on the List of Counsel, to be completed under oath and returned to the RTC Division of Legal Services.

(c) The RTC Division of Legal Services will review the certification affidavit to ensure qualifying status.

Subpart L—Law Firm Direct Referral, Joint Venture, and Other Arrangements

§ 1617.110 General.

(a) The RTC's goal is to increase the use of existing expertise and experience possessed by MWOLFs, and to enable MWOLFs to develop expertise in areas that are new to them. The ultimate goal is that each MWOLF achieve self-sufficiency in all matters. These goals will be achieved through direct referrals, joint venture/co-counsel referrals, and other arrangements.

(b) When work is assigned to law firms based upon competitive solicitations, law firms will be eligible for cost and technical preference points to the same extent as set forth for non-legal contracts in § 1617.51 of this part. The General Counsel (or designee) will determine whether firms are eligible for cost and technical preference points. The General Counsel shall periodically determine whether the level of cost and technical preference points set forth in § 1617.51 of this part are sufficient to maximize MWOLF participation, and if not, shall make a general adjustment to the points to be assigned in competitive solicitations.

§ 1617.111 Direct referral.

Direct referral of a legal matter to an MWOLF by an RTC attorney or a private sector contractor will be used when the MWOLF has both the capacity and the experience to handle the matter. It is the MWOC's responsibility to identify MWOLFs with the capacity and experience to handle particular matters, or in the case of Headquarters Office matters, it is the responsibility of the General Counsel (or designee).

§ 1617.112 Joint venture/co-counsel referral.

(a) A joint venture/co-counsel referral will be used to combine the resources of two or more law firms. This arrangement pairs MWOLFs with some experience in the area of referral with other MWOLFs or with non-MWOLFs more experienced in the same area or with greater capability to handle the matter.

(b) The goal with respect to the division of work and the allocation of fees for these matters is that, as a general rule, at least 25 percent of the substantive work be performed by MWOLFs, and at least 25 percent of the projected total fee billings be generated by MWOLFs. The RTC expects that as MWOLFs become more proficient in RTC legal issues, their level of participation in matters referred pursuant to the Joint Referral Program, as well as the fees they generate, shall increase.

(c)(1) The RTC Division of Legal Services will review the joint venture/co-counsel arrangement, which must set

forth the degree of participation of each firm, and provide for liability to be maintained by each firm for its share of the work. These arrangements must be in conformance with Division of Legal Services Policy 92-02 (the Joint Referrals and Representation Program).

(2) Copies of the document referred to in paragraph (c)(1) of this section are available from the RTC Public Reading Room, 801 17th Street, NW., room 100, Washington, DC 20434-0001.

§ 1617.113 Other arrangements.

(a) Other forms of affiliation between less experienced MWOLFs and more experienced MWOLFs or non-MWOLFs are available and are encouraged to be utilized for work on a particular matter or for a specified period of time.

(b) All arrangements must be approved by the RTC Division of Legal Services' attorney overseeing the matter, in coordination with the L-MWOC, and if necessary, the General Counsel (or designee).

(c) The overriding objective of these arrangements is that for work allocated in such a manner, the less experienced MWOLF receives sound training in the relevant issues while pursuing the matter as cost effectively as possible.

Subpart M—Law Firm Oversight and Monitoring

§ 1617.120 Oversight and monitoring.

Various standardized reports will be prepared by the RTC Division of Legal Services to indicate, among other things, the total number and type of legal matters referred to MWOLFs, the dollar amounts of fees paid to MWOLFs, a breakdown of various affiliations of MWOLFs with non-MWOLFs, and the local outreach efforts made within Field Offices, as well as the Headquarters Office.

By order of the Chief Executive Officer.

Dated at Washington, DC, this 24th day of July, 1992.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Secretary.

[FR Doc. 92-18730 Filed 8-7-92; 8:45 am]

BILLING CODE 6714-01-M

Indian Forest Federal Register

Monday
August 10, 1992

Part V

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Forest County
Potawatomi Community of Wisconsin;
Notice

DEPARTMENT OF THE INTERIOR**Indian Gaming; Forest County
Potawatomi Community of Wisconsin**

AGENCY: Bureau of Indian Affairs,
Interior.

ACTION: Notice of approved tribal-state
compact.

SUMMARY: Pursuant to 25 U.S.C. 2710 of
the Indian Gaming Regulatory Act of
1988 (Pub. L. 100-497), the Secretary of

the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority has approved the Forest County Potawatomi Community of Wisconsin and State of Wisconsin Gaming Compact of 1992, enacted June 3, 1992.

DATES: This action is effective August 10, 1992.

ADDRESSES: Office of Tribal Services, Bureau of Indian Affairs, Department of the Interior, MS/MIB 4603, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Chief, Division of Tribal Government Services, Bureau of Indian Affairs, Washington, DC 20240, (202) 208-7446.

Dated: August 4, 1992.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

[FR Doc. 92-18842 Filed 8-7-92; 8:45 am]

BILLING CODE 4310-02-M

Registered Federal Land

Monday
August 10, 1992

Part VI

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Menominee Indian Tribe
of Wisconsin; Notice

DEPARTMENT OF THE INTERIOR**Indian Gaming; Menominee Indian Tribe of Wisconsin**

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved tribal-state compact.

SUMMARY: Pursuant to 25 U.S.C. 2710 of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100-497), the Secretary of the Interior shall publish, in the Federal

Register, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority has approved the Menominee Indian Tribe of Wisconsin and the State of Wisconsin Gaming Compact of 1992, enacted June 3, 1992.

DATES: This action is effective August 10, 1992.

ADDRESSES: Office of Tribal Services, Bureau of Indian Affairs, Department of the Interior, MS/MIB 4603, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Chief, Division of Tribal Government Services, Bureau of Indian Affairs, Washington, DC 20240, (202) 208-7446.

Dated: August 3, 1992.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

[FR Doc. 92-18843 Filed 8-7-92; 8:45 am]

BILLING CODE 4310-02-M

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Monday, August 10, 1992

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

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1, 2 (2 Reserved).....	(869-017-00001-9).....	\$13.00	Jan. 1, 1992
3 (1991 Compilation and Parts 100 and 101).....	(869-017-00002-7).....	17.00	Jan. 1, 1992
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1900-1910 (§§ 1901.1 to 1910.999)	(869-013-00109-5)	24.00	July 1, 1991	18, Vol. III, Parts 20-52		13.00	^a July 1, 1984
1910 (§§ 1910.1000 to end)	(869-013-00110-9)	14.00	July 1, 1991	19-100		13.00	^a July 1, 1984
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30 Parts:				201-End	(869-013-00156-7)	10.00	July 1, 1991
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² The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

³ The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

⁴ No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1991. The CFR volume issued January 1, 1987, should be retained.

⁵ No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1991. The CFR volume issued April 1, 1990, should be retained.

⁶ No amendments to this volume were promulgated during the period Apr. 1, 1991 to Mar. 30, 1992. The CFR volume issued April 1, 1991, should be retained.

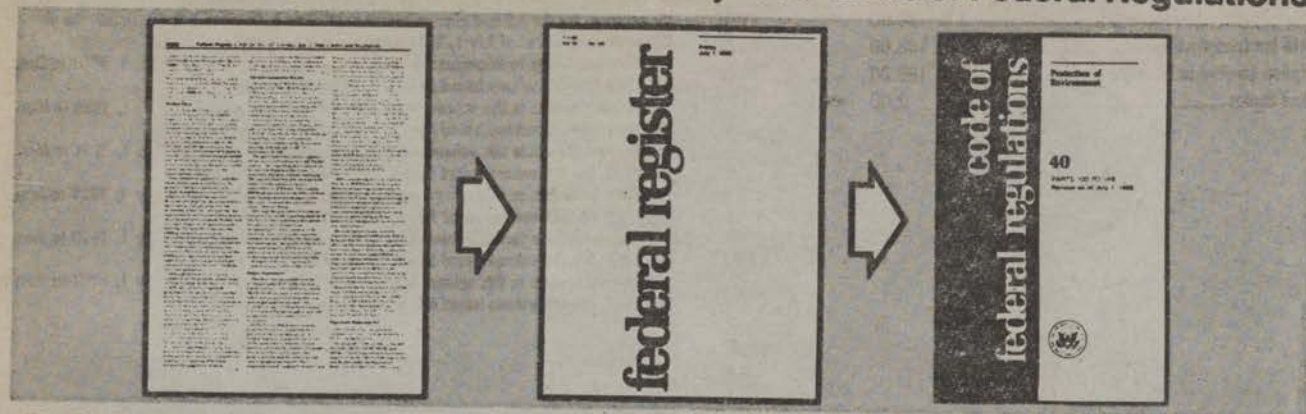
⁷ No amendments to this volume were promulgated during the period July 1, 1989 to June 30, 1992. The CFR volume issued July 1, 1989, should be retained.

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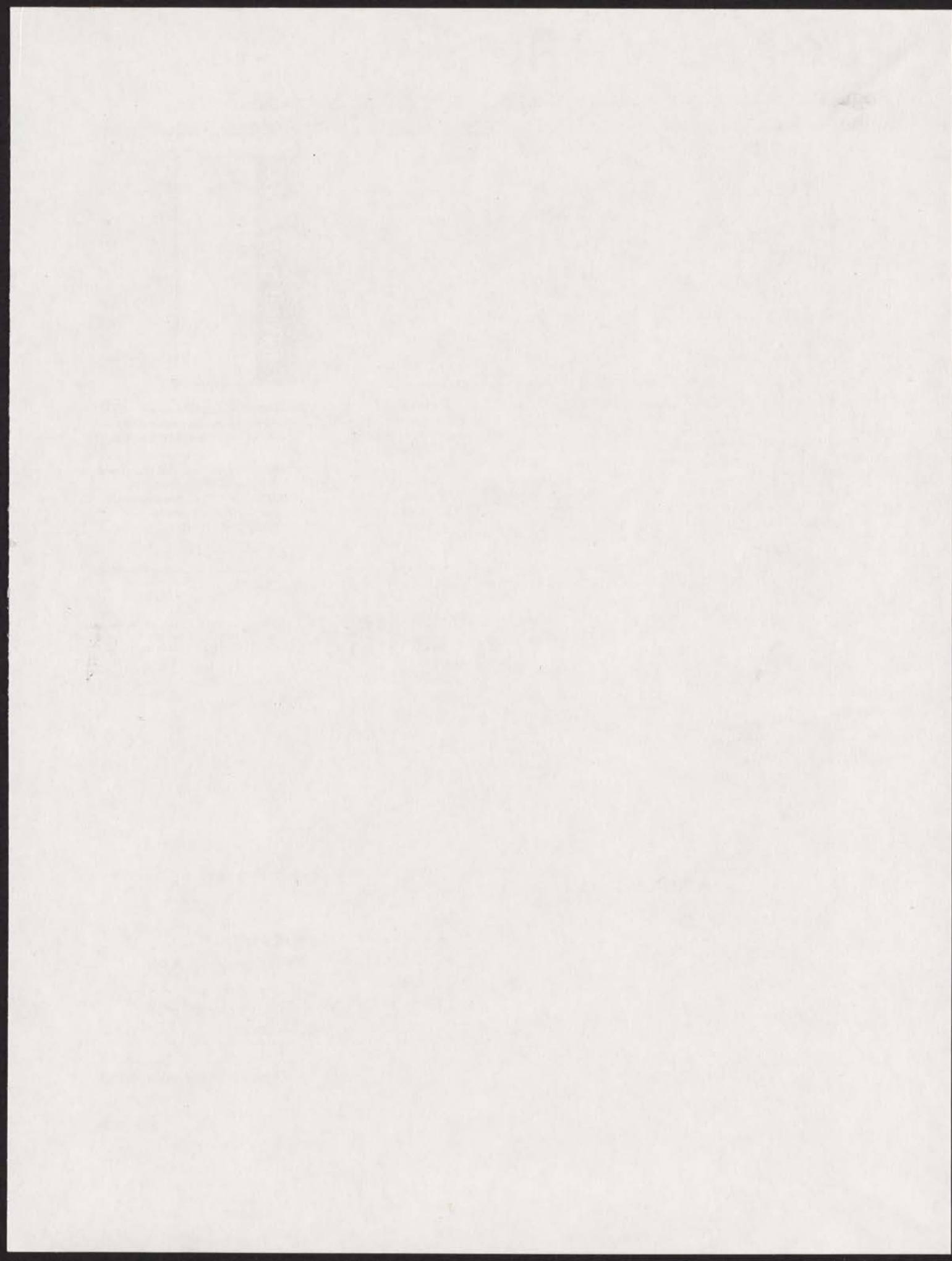
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